

CLERK'S COPY.

166  
85776  
11220  
pet. TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1937

No. 757

THE UNITED STATES OF AMERICA, APPELLANT,

vs.

MILO W. BEKINS AND REED J. BEKINS, AS TRUSTEES, APPOINTED BY THE WILL OF MARTIN BEKINS, DECEASED, ET AL., ETC.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR  
THE SOUTHERN DISTRICT OF CALIFORNIA

FILED FEBRUARY 5, 1938

No. 772

LINDSAY STRATHMORE IRRIGATION DISTRICT,  
APPELLANT,

vs.

MILO W. BEKINS AND REED J. BEKINS, AS TRUSTEES, APPOINTED BY THE WILL OF MARTIN BEKINS, DECEASED, ET AL., ETC.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR  
THE SOUTHERN DISTRICT OF CALIFORNIA

FILED FEBRUARY 5, 1938

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

## No. 757

THE UNITED STATES OF AMERICA, APPELLANT,

*vs.*

MILO W. BEKINS AND REED J. BEKINS, AS TRUSTEES, APPOINTED BY THE WILL OF MARTIN BEKINS, DECEASED, ET AL., ETC.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR  
THE SOUTHERN DISTRICT OF CALIFORNIA

## No. 772

LINDSAY-STRATHMORE IRRIGATION DISTRICT,  
APPELLANT,

*vs.*

MILO W. BEKINS AND REED J. BEKINS, AS TRUSTEES, APPOINTED BY THE WILL OF MARTIN BEKINS, DECEASED, ET AL., ETC.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR  
THE SOUTHERN DISTRICT OF CALIFORNIA

### INDEX.

	Original	Print
Record from D. C. U. S., Southern District of California,		
Case No. 772.....	1	1
Names and addresses of attorneys (omitted in printing) .....	1	
Citations and service..... (omitted in printing).....	2	
Petition for confirmation of plan for composition and readjustment of debts.....	6	1
Exhibit "A"—List of all known creditors.....	14	8
Order approving petition, etc.....	26	15
Order to show cause why injunction should not issue, etc.	30	19
Notice of motion to dismiss petition.....	32	20
Motion to dismiss petition (Milo W. Bekins, et al.).....	33	21

Record from D. C. U. S., Southern District of California,  
Case No. 772—Continued.

	Original	Print
Motion of James H. Jordan to dismiss petition.....	37	24
Return of certain creditors to order to show cause.....	38	25
Exhibit "A"—Complaint in Superior Court, Case of Bekins et al. vs. Lindsay-Strathmore Irrigation District, No. 28905.....	47	32
Exhibit "A"—List of bonds.....	51	36
Exhibit "B"—List of bonds.....	55	39
Exhibit "B"—Petition for writ of mandate in Su- perior Court, Case of Bekins et al. vs. Board of Su- pervisors, No. 27007.....	57	40
Exhibit "A"—Resolution of Board of Supervi- sors levying assessments.....	67	48
Exhibit "C"—Alternative writ of mandate issued by Superior Court, No. 27007.....	69	50
Exhibit "D"—Demurrer to petition in Superior Court, No. 27007.....	71	51
Exhibit "E"—Special return of Lindsay-Strathmore Irrigation District, Superior Court, No. 27007....	72	52
Exhibit "F"—Order of Superior Court suspending proceedings, No. 27007.....	75	55
Return of James H. Jordan to order to show cause.....	77	56
Proof of claim by James Irvine.....	78	57
Affidavit of mailing notice to creditors.....	80	59
Affidavit of mailing order to show cause.....	82	61
Affidavit of publication of notice to creditors.....	86	64
Affidavit of publication of notice to creditors.....	88	64
Certificate of judge under Act of August 24, 1937.....	89	65
Petition of intervention by United States of America....	92	66
Order allowing intervention of United States of America.	97	68
Minutes of hearing, November 8, 1937.....	99	68
Certified copy of dismissal of Case No. 4005.....	100	69
Opinion of court, Yankwich, J.....	102	71
Order granting motion to dismiss.....	120	81
Proof of claim by treasurer of Reconstruction Finance Corporation .....	121	82
Proof of claim by W. J. Burns, trustee.....	124	84
Judgment of dismissal.....	130	89
Order amending order granting motion to dismiss.....	134	91
Petition for appeal.....	135	92
Assignments of error.....	136	92
Order allowing appeal.....	138	94
Order approving security for costs.....	139	95
Appellant's praecipe for transcript of record.....	180	96
Counter-praecipe for transcript of record.....	183	98
Clerk's certificate .....	185	(omitted in printing)
Appeal papers from record from D. C. U. S., Southern Dis- trict of California, Case No. 757.....	187	99
Petition for appeal.....	187	99
Assignments of error.....	189	100
Order allowing appeal.....	191	101
Statement of points to be relied upon, Case No. 757.....	194	102
Statement of points to be relied upon, Case No. 772.....	195	102
Stipulation as to printing of records.....	199	104

[fol. 1] Names and addresses of attorneys omitted in printing.

[fols. 2-5] Citations, in usual form, showing service on E. Coburn Cook, filed December 16, 1937, omitted in printing.

[fol. 6]

**IN UNITED STATES DISTRICT COURT, SOUTHERN  
DISTRICT OF CALIFORNIA, NORTHERN DIVISION**

No. 4575

In the Matter of the Petition of LINDSAY-STRATHMORE IRRIGATION DISTRICT, an Insolvent Taxing Agency, for Confirmation of a Plan for the Composition and Readjustment of its Debts

PETITION FOR CONFIRMATION OF PLAN FOR COMPOSITION AND READJUSTMENT OF ITS DEBTS—Filed September 21, 1937

To the Honorable the District Court of the United States for the Southern District of California, Northern Division:

The duly verified petition of Lindsay-Strathmore Irrigation District respectfully shows:

1. Petitioner is an irrigation district, duly organized and existing pursuant to and under and by virtue of the provisions of that certain act of the Legislature of the State of California known as the "California Irrigation District Act", approved March 31, 1897, and the acts amendatory thereof and supplemental thereto, and comprises approximately fifteen thousand two hundred sixty (15,260) acres of land and is located wholly in the County of Tulare, State of California, and within the territorial jurisdiction of the above entitled court, and has its principal office at Lindsay in said County of Tulare, State of California.

2. Petitioner is an irrigation district such as is commonly designated as an agricultural improvement district, organized and created for the purpose of construction, improving, maintaining and operating certain improvement proj-



ects and works devoted chiefly to the improvement of lands therein for agricultural purposes; and is a taxing agency or instrumentality within the meaning and intent of an act of the Congress of the United States approved August [fol. 7] 16, 1937, entitled "An act to amend an act entitled 'An act to establish a uniform system of bankruptcy throughout the United States', approved July 1, 1898, and acts amendatory thereof and supplementary thereto." Petitioner is entitled to the relief provided by said act and this petition is filed under and pursuant to the provisions thereof and pursuant to a resolution of its Board of Directors duly and regularly passed and adopted at a meeting duly and regularly called and held on the 7th day of September, 1937. The indebtedness of petitioner hereinafter referred to is payable out of assessments and taxes levied against and constituting a lien upon lands within its boundaries.

3. Petitioner is insolvent and unable to meet its debts as they mature and desires to effect a plan for the composition of its debts. The debts of petitioner which are affected by the proposed plan of composition hereinafter set forth consist of the outstanding bonds of two issues of bonds duly issued by petitioner under the provisions of said "California Irrigation District Act", and the matured and unpaid interest thereon, which debts are more particularly described as follows:

(a) Coupon bonds in the principal amount of One Million One Hundred Ninety-two Thousand Dollars (\$1,192,000.00), being all of the outstanding bonds of that certain issue designated as "First Issue" originally in the aggregate principal amount of One Million Four Hundred Thousand Dollars (\$1,400,000.00), bearing interest at the rate of six per cent (6%) per annum, payable on the first day of January and the first day of July of each year, all of said outstanding bonds being dated July 1, 1916, maturing serially from 1933 to 1946, both inclusive, on July first of each year.

(b) Coupon bonds in the principal amount of Two Hundred Thirty-Five Thousand Dollars (\$235,000.00), being all of the outstanding bonds of that certain issue designated as "Second Issue" originally in the aggregate principal amount of Two Hundred Fifty Thousand Dollars (\$250,-

000.00), bearing interest at the rate of six per cent (6%) per annum, payable on the first day of January and the first day of July of each year, all of such outstanding bonds of such second issue being dated October 1, 1918, maturing serially from 1933 to 1948, both inclusive, on October first of each year.

(c) Matured and unpaid interest on the aforesaid bonds amounting approximately to the sum of \$439,085.15 calculated as of October 1st, 1937, and consisting of both the [fol. 8] matured interest coupons appurtenant to said bonds, and the interest provided by law on such bonds and coupons as have matured and have been presented in accordance with the provisions of Section 52 of the "California Irrigation District Act".

The claims of the holders of all said outstanding bonds are payable without preference out of funds derived from the same source and said holders constitute but one class of creditors. No creditors of petitioner other than the holders of said issued and outstanding bonds will be in any way affected by the provisions of the plan of composition and debt readjustment herein referred to and hereinafter set out.

4. A plan for the composition and readjustment of the above mentioned debts of petitioner has been prepared, accepted and approved by petitioner and creditors of petitioner owning not less than fifty-one per cent (51%) in amount of the securities affected by the plan (excluding, however, any such securities owned, held, or controlled by the petitioner), to wit, creditors owning approximately eighty-seven per cent (87%) of such securities have in writing accepted said plan and consented to the filing of this petition. Said plan is hereby submitted to said court and is as follows:

Petitioner will pay in cash to each of the holders of the outstanding bonds hereinabove described a sum equal to 59.978 Cents for each Dollar of the principal amount of each such bond, in full payment, discharge and satisfaction of all amounts of principal and interest payable on such bond under the terms thereof or by reason of the presentation of such bond or any appurtenant coupon as provided

4

by section 52 of the "California Irrigation District Act"; provided that if any coupon or coupons which matured on or prior to January 1, 1934, be not attached to or surrendered with the bond to which it is appurtenant, then the amount to be paid on such bond shall be reduced in an amount equal to 56.58 Cents for each Dollar of the face amount of such missing coupon or coupons and if any coupon or coupons, which matured subsequent to January 1, [fol. 9] 1934, be not attached to or surrendered with the bond to which it is appurtenant the amount to be paid on such bond shall be reduced by the face amount of such missing coupon or coupons.

Petitioner proposes to make payment of the amount required by the plan of composition or debt readjustment from the proceeds of a loan which the Reconstruction Finance Corporation, an agency of the United States of America, has authorized and agreed to make to petitioner. To evidence such loan petitioner proposes to issue and deliver to the Reconstruction Finance Corporation its new or refunding serial coupon bonds in an aggregate principal amount equal to the amount borrowed by petitioner in connection with the composition and readjustment of its debts. The new or refunding serial bonds to be issued and delivered by the petitioner to the Reconstruction Finance Corporation will bear interest at the rate of four per cent (4%) per annum, payable semi-annually and petitioner will pay interest on such bonds from the date of delivery. The first instalment of principal will mature three years after date of such bonds and thereafter the remaining principal will mature in instalments annually over a period of thirty (30) years, according to a schedule under which the total amount required to pay both principal and interest in any one year will not exceed the sum of Fifty Thousand Dollars (\$50,000.00). Petitioner also proposes to pay Reconstruction Finance Corporation four per cent (4%) interest on all amounts advanced from the date of advancement until the new or refunding bonds are issued and delivered to said Corporation.

5. There is annexed hereto marked Exhibit "A" and filed with and made a part of this petition a list of all known creditors of petitioner together with their respective addresses, so far as known to petitioner, and a description of

their respective securities, showing separately those who have accepted the plan of composition, together with their separate addresses. The contents of said list does not constitute admissions by petitioner in this proceeding or otherwise.

[fol. 10] 6. Petitioner was organized on October 25, 1915, to provide for the acquisition or construction of works for the irrigation of lands embraced within its boundaries and to provide for the distribution of water for irrigation and domestic purposes, and said petitioner has been supplying water for such purposes for approximately nineteen (19) years last past. Due to the general financial depression existing throughout the United States during a period which commenced about the year 1930, the price of agricultural products was forced to such a low level that farmers were able to secure for their products no price sufficient to pay the cost of production and the assessments and taxes levied upon their lands. All of the lands within the boundaries of petitioner are agricultural lands and the owners thereof were and are unable to pay their taxes and assessments. Assessments were levied upon the lands within the boundaries of petitioner, as provided by the "California Irrigation District Act", for the purpose of paying bonds and interest coupons but by reason of the inability of the landowners of said petitioner to pay such assessments same have become delinquent and petitioner has been and is unable to collect the same and was compelled to and did make default in payment of interest and principal on its bonds falling due July 1, 1933, and has not been able to and has not paid any interest or principal of said bonds falling due since said 1st day of July, 1933, and that the total amount due upon the debts of said petitioner, described in paragraph 3 of this petition, is the sum of \$756,085.15. The delinquency in the payment of the amount levied as assessments in said District in the year 1932 was approximately forty-seven per cent (47%) of the total amount levied and in order to raise sufficient money to maintain and operate the works of petitioner, petitioner did in the year 1933, and in all years subsequent thereto, apply to and obtain from the California District Securities Commission approval of rates of assessment sufficient to raise only such amounts of money as were required for the maintenance and operation



of petitioner's works. If in any year subsequent to 1933 a [fol. 11] sufficient rate of assessment had been levied to provide for the payment of bond interest and principal, delinquent or to mature in the next succeeding year, petitioner would have been unable to realize from such assessment a sufficient amount to maintain and operate its said works. Petitioner has at all times diligently endeavored to collect the assessments levied as aforesaid but for the reasons aforesaid has been unable to do so and on its information and belief alleges that it will be unable to do so. By reason thereof petitioner has been and now is unable to pay any of the interest on its said bonds or any principal thereof maturing since July 1, 1933, and will be unable to pay its bonds or the interest thereon as the same are scheduled to mature. Said petitioner is insolvent and for the reasons aforesaid a condition was created and now exists as contemplated by Chapter 10 of said Federal Bankruptcy Act and petitioner desires, and alleges that it is necessary, to effect a plan of composition and readjustment of its debts as hereinbefore set forth.

7. The offer of the plan of composition and debt adjustment by the petitioner and its acceptance by the said consenting creditors are in good faith and said plan of composition is fair, equitable and for the best interests of the creditors and does not discriminate unfairly in favor of any class of creditors. Petitioner is authorized by law upon confirmation of the plan to take all action necessary to carry out the plan.

8. The plan of composition and debt readjustment proposed herein contemplates that petitioner shall operate, protect, preserve and maintain, in the usual and customary manner, its system of irrigation works and that petitioner shall pay, and petitioner should be permitted to pay, the reasonable cost of maintaining, protecting, preserving and operating its works during the pendency of this proceeding, together with the necessary court costs and a reasonable fee to counsel for petitioner, the amount thereof to be approved by the court.

[fol. 12]

Wherefore, petitioner prays:

1. That this court make its order approving this petition as properly filed in good faith under the provisions of said Chapter 10 of said National Bankruptcy Act.

2. That upon the filing of this petition the court make and enter an order, fixing the time and place for a hearing on the petition and providing that notice be given to creditors as provided by law.

3. That an order be made and entered herein enjoining and staying, pending the determination of the matter, the commencement or continuation of suits against petitioner or any officer or inhabitant thereof, on account of the securities affected by the plan, or the commencement or continuation of any suit, process or proceeding to enforce any lien or to enforce the levy of taxes or assessments for the payment of obligations under such securities or any suit or process to levy upon or enforce against any property acquired by the petitioner through foreclosure of any tax or assessment lien.

4. That upon the completion of the hearing of the plan an interlocutory decree be entered approving and confirming the plan and putting it into effect.

5. That upon completion of the plan of composition and debt readjustment a final decree be entered discharging petitioner from all debts and liabilities in accordance with the plan.

6. That the court allow and give such other hearings and make such orders, decrees, confirmations and finally determinations as may be proper and necessary in the premises.

Lindsay-Strathmore Irrigation District, by Ernest L. Daniells, Its President.

Attest: H. R. Huebert, Its Secretary. James R. McBride, Mitchell, Silberberg, Roth & Knupp, by Guy Knupp, Attorneys for Petitioner.

gk:m.

[fol. 13] *Duly sworn to by Ernest L. Daniells. Jurat omitted in printing.*

[fol. 14]

## EXHIBIT "A" TO PETITION

Being a list of all known creditors of the petitioner, together with their respective addresses so far as known to petitioner, and description of their respective securities and showing separately in Part One thereof, those who have accepted the plan, together with their separate addresses, and in Part Two all other creditors with their respective addresses.

## Part One.

Creditors who have accepted the plan:

Name and Residence	Description
Reconstruction Finance Corporation Drainage, Levee and Irrigation Division Hill Building, Washington, D. C., and Wm. J. Burns, Trustee 32 Central Avenue, Phoenix, Arizona.	Bonds of both issues in the aggregate principal amount of \$1,242,500.00 on which bonds appurtenant coupons in the aggregate face amount of approximately \$304,710.00 have matured and on which bonds and coupons additional interest after presentment at maturity and in the aggregate amount of approximately \$74,089.39 has accrued to September 1, 1937 under the provisions of Section 52 of the California Irrigation District Act. Total claim, approximately—\$1,621,299.39.

## Part Two

All Other Creditors:

Name and Residence	Number and Issue of Bond	Prin. Amt.	Interest Per Coupon	Interest Per Sec. 52 C. I. D. A.	Total Claim
J. R. Mason, 1920 Lake St., San Francisco, California.....	2-262	\$500	\$120.00	\$16.14	
	2-263	500	120.00	16.14	
	1-433	1,000	120.00	176.14	
	1-495	\$500	120.00	88.07	
	1-496	500	60.00	88.07	
	1-497	500	60.00	88.07	
	1-578	500	90.00	56.09	
	1-1737	500	120.00	16.13	
	1-1738	500	120.00	16.13	
	1-621	500	90.00	56.09	
	1-869	1,000	240.00	32.28	
	1-870	1,000	240.00	32.28	
	1-882	1,000	240.00	32.28	
	1-941	500	120.00	16.14	
	1-942	500	120.00	16.14	
	1-981	1,000	240.00	32.28	
	1-982	1,000	240.00	32.28	
	1-1235	1,000	240.00	32.28	
	1-1236	1,000	240.00	32.28	
	1-1257	1,000	240.00	32.28	
	1-1283	500	120.00	16.14	
	1-1286	500	120.00	16.14	

[fol. 15]

Part Two—Continued.

Description

Name and Residence	Number and Issue of Bond	Prin. Amt.	Interest Per Coupon	Interest Per Sec. 52 C. I. D. A.	Total Claim
	1-1822	500	120.00	16.14	
	1-1827	500	120.00	16.14	
	1-1828	500	120.00	16.14	
	1-1875	1,000	240.00	32.28	
	1-1877	1,000	240.00	32.28	
	1-1785	500	120.00	16.14	
	1-1790	500	120.00	16.14	
	1-1878	1,000	240.00	32.28	
	1-1889	1,000	240.00	32.28	
	1-1890	1,000	240.00	32.28	
	1-1891	1,000	240.00	32.28	
	1-1972	500	120.00	16.14	
	1-1995	500	120.00	16.14	
	1-1996	500	120.00	16.14	
	1-1997	500	120.00	16.14	
	1-1998	500	120.00	16.14	
	1-1999	500	120.00	16.14	
	1-2000	500	120.00	16.14	
	1-2097	500	120.00	16.14	
	1-2098	500	120.00	16.14	
	1-1876	1,000	240.00	32.28	
	1-1803	500	120.00	16.14	
		30,000	6,900.00	1,407.93	
Total Claim.....					\$38,307.93

Milo W. Bekins and  
Reed J. Bekins, sep-  
arately and individu-  
ally, and as trustees,  
c/o Bekins Van &  
Storage Co., 190 Otis  
St., San Francisco,  
Calif.....

1-354	1,000	90.00	238.54
1-355	1,000	90.00	238.54
1-356	1,000	90.00	238.54
1-385	500	45.00	119.28
1-386	500	45.00	119.28
1-387	500	45.00	119.28
1-388	500	45.00	119.28
1-410	500	45.00	119.28
1-411	500	45.00	119.28
1-412	500	45.00	119.28
1-413	500	45.00	119.28
1-414	500	45.00	119.28
1-415	500	45.00	119.28
1-416	500	45.00	119.28
1-417	500	45.00	119.28
1-418	500	45.00	119.28
1-419	500	45.00	119.28
1-420	500	45.00	119.28
1-429	1,000	150.00	184.71
1-440	1,000	150.00	184.71
1-441	1,000	150.00	184.71
1-454	1,000	150.00	184.71
1-455	1,000	150.00	184.71
1-480	500	75.00	92.36



## Part Two—Continued.

Name and Residence	Number and Issue of Bond	Description			Total Claim
		Prin. Amt.	Interest Per Coupon	Interest Per Sec. 52 C. I. D. A.	
	1-481	500	75.00	92.36	
	1-482	500	75.00	92.36	
	1-483	500	75.00	92.36	
	1-499	500	75.00	92.36	
	1-508	500	75.00	92.36	
	1-509	500	75.00	92.36	
	1-514	500	75.00	92.36	
	1-515	500	75.00	92.36	
	1-516	500	75.00	92.36	
	1-517	500	75.00	92.36	
	1-518	500	75.00	92.36	
	1-519	500	75.00	92.36	
	1-520	500	75.00	92.36	
	1-521	500	75.00	92.36	
	1-522	500	75.00	92.36	
	1-523	500	75.00	92.36	
	1-524	500	75.00	92.36	
	1-525	500	75.00	92.36	
	1-526	1,000	210.00	120.75	
	1-532	1,000	210.00	120.75	
	1-540	1,000	210.00	120.75	
	1-541	1,000	210.00	120.75	
	1-545	1,000	210.00	120.75	
	1-546	1,000	210.00	120.75	
	1-552	1,000	210.00	120.75	
	1-559	1,000	210.00	120.75	
	1-560	1,000	210.00	120.75	
	1-577	500	105.00	60.38	
	1-585	500	105.00	60.38	
	1-586	500	105.00	60.38	
	1-587	500	105.00	60.38	
	1-588	500	105.00	60.38	
	1-589	500	105.00	60.38	
	1-590	500	105.00	60.38	
	1-591	500	105.00	60.38	
	1-592	500	105.00	60.38	
	1-647	1,000	270.00	52.51	
	1-648	1,000	270.00	47.36	
	1-649	1,000	270.00	47.36	
	1-650	1,000	270.00	47.36	
	1-676	500	135.00	26.25	
	1-677	500	135.00	26.25	
	1-682	500	135.00	26.25	
	1-683	500	135.00	26.25	
	1-686	500	135.00	26.25	
	1-687	500	135.00	26.25	
	1-688	500	135.00	26.25	
	1-689	500	135.00	26.25	
	1-690	500	135.00	26.25	
	1-691	500	135.00	26.25	
	1-696	500	135.00	26.25	
	1-697	500	135.00	26.25	
	1-698	500	135.00	26.25	
	1-749	1,000	270.00	40.94	
	1-750	1,000	270.00	40.94	
	1-751	1,000	270.00	40.94	
	1-752	1,000	270.00	40.94	
	1-781	500	135.00	20.43	

[fol. 18]

## Part Two—Continued.

Name and Residence	Number and Issue of Bond	Description			Total Claim
		Prin. Amt.	Interest Per Coupon	Interest Per Sec. 52 C. I. D. A.	
[fol. 19]	1-782	500	135.00	20.43	
	1-783	500	135.00	20.43	
	1-786	500	135.00	20.43	
	1-787	500	135.00	20.43	
	1-788	500	135.00	20.43	
	1-817	500	135.00	20.43	
	1-818	500	135.00	20.43	
	1-819	500	135.00	20.43	
	1-820	500	135.00	20.43	
	1-821	500	135.00	20.43	
	1-840	500	135.00	20.43	
	1-936	500	135.00	20.43	
	1-995	1,000	270.00	40.94	
	1-996	1,000	270.00	40.94	
	1-997	1,000	270.00	40.94	
	1-1238	1,000	270.00	40.94	
	1-1290	500	135.00	20.43	
	1-1291	500	135.00	20.43	
	1-1292	500	135.00	20.43	
	1-1401	500	135.00	20.43	
	1-1402	500	135.00	20.43	
	1-1416	500	135.00	20.43	
	1-1417	500	135.00	20.43	
	1-1418	500	135.00	20.43	
	1-1419	500	135.00	20.43	
	1-1420	500	135.00	20.43	
[fol. 20]	1-1942	1,000	270.00	40.94	
	1-1943	1,000	270.00	40.94	
	1-1944	1,000	270.00	40.94	
	1-1945	1,000	270.00	40.94	
	1-1946	1,000	270.00	40.94	
	1-263	1,000	30.00	275.17	
	1-264	1,000	30.00	275.17	
	1-265	1,000	30.00	275.17	
	1-266	1,000	30.00	275.17	
	1-272	1,000	30.00	275.17	
	1-273	1,000	30.00	275.17	
	1-274	1,000	30.00	275.17	
	1-305	500	15.00	137.58	
	1-307	500	15.00	137.58	
	1-332	500	15.00	137.58	
	1-333	500	15.00	137.58	
	1-334	500	15.00	137.58	
	1-335	500	15.00	137.58	
	1-336	500	15.00	137.58	
Total Claim.....		\$84,000	15,730.00	11,240.50	\$110,960.50
Wells Fargo Bank & U. T. Co., Market at Montgomery, San Francisco, Calif.....	1-822	500	135.00	20.34	
	1-934	500	135.00	20.34	
	1-935	500	135.00	20.34	
	1-1511	1,000	270.00	40.68	
	1-719	500	135.00	26.17	
Total claim.....		\$3,000	810.00	127.87	\$3,937.87

## Part Two—Continued.

Name and Residence	Number and Issue of Bond	Description			Total Claim
		Prin. Amt.	Interest Per Coupon	Interest Per Sec. 52 C. I. D. A.	
David F. Selby, 373-13th St., Oakland, Calif.....	1-582	500	105.00	58.78	
	1-583	500	105.00	58.78	
		\$1,000	210.00	117.56	
Total claim.....					\$1,327.56
[fol. 21]					
Walter J. Selby, 1161 Greenwich St., San Francisco, Calif.....	1-1873	1,000	270.00	39.42	
	1-1874	1,000	270.00	39.42	
	1-1875	1,000	270.00	39.42	
		\$3,000	810.00	118.06	
Total claim.....					\$3,928.06
A. Heber Winder Trust for Eva A. Parrington Trust, 204 Loring Bl., Riverside, Calif..	1-1851	500	120.00	16.09	
	1-1852	500	120.00	16.09	
		\$1,000	240.00	32.18	
Total claim.....					\$1,272.18
James H. Jordan, 200 Loring Bl., Riverside, Calif.....	1-408	500	30.00	118.00	
	1-409	500	30.00	118.00	
	1-512	500	60.00	158.09	
	1-513	500	60.00	158.09	
	1-534	1,000	180.00	112.20	
	1-535	1,000	180.00	112.20	
	1-659	1,000	240.00	43.96	
	1-836	500	120.00	16.12	
	1-553	1,000	210.00	120.71	
	1-1524	1,000	240.00	32.27	
	1-406	500	30.00	117.21	
	1-407	500	30.00	117.21	
	1-510	500	60.00	88.05	
	1-511	500	60.00	88.05	
	1-531	500	90.00	56.07	
	1-579	500	90.00	56.07	
	1-614	500	105.00	60.31	
	1-615	500	105.00	60.43	
	1-616	500	105.00	60.43	
	1-722	500	120.00	23.82	
	1-733	500	135.00	26.20	
	1-734	500	135.00	26.20	
	2-81	1,000	240.00	32.25	
		\$14,500	2,655.00	1,802.04	
Total claim.....					\$18,957.04

## Part Two—Continued.

Name and Residence	Number and Issue of Bond	Description			Total Claim
		Prin. Amt.	Interest Per Coupon	Interest Per Sec. 52 C. I. D. A.	
James Irvine, c/o Crocker F. N. B. of San Francisco, San Francisco, Calif.....	2-44	1,000	165.00	168.89	C
	2-45	1,000	165.00	168.89	
	2-46	1,000	165.00	168.89	
	2-47	1,000	165.00	168.89	
	2-48	500	82.50	83.12	
	2-49	500	82.50	83.12	
	2-50	500	82.50	83.12	
	2-51	500	82.50	83.12	
	2-52	500	82.50	83.12	
	2-53	500	82.50	83.12	
	2-54	500	82.50	83.12	
	2-55	500	82.50	83.12	
	2-56	500	82.50	83.12	
	2-57	500	82.50	83.12	
	2-61	1,000	225.00	103.91	
	2-62	1,000	225.00	103.91	
	2-63	1,000	225.00	103.91	
	2-64	500	112.50	51.95	
	2-65	500	112.50	51.95	
	2-66	500	112.50	51.95	
	2-67	500	112.50	51.95	
	2-202	1,000	270.00	40.55	
	2-203	1,000	270.00	40.55	
	2-266	500	135.00	20.27	
	2-270	1,000	270.00	40.55	
	2-271	1,000	270.00	40.55	
Total claim.....		\$18,500	\$13,325.00	\$2,208.76	\$24,533.76

Lina J. French Testtr.,  
c/o Security First  
N. B., 6th & Spring  
St., Los Angeles,  
Calif.....

1-1250	1,000	240.00	41.63
1-1310	500	120.00	15.61
1-1311	500	120.00	15.61
1-1312	500	120.00	15.61
1-1313	500	120.00	15.61
1-1314	500	120.00	15.61
1-1315	500	120.00	15.61
1-1316	500	120.00	15.61
1-1317	500	120.00	15.61
1-1373	1,000	240.00	31.23
1-1374	1,000	240.00	31.23
1-1375	1,000	240.00	31.23
1-1376	1,000	240.00	31.23
1-1377	1,000	240.00	31.23
1-1378	1,000	240.00	31.23
1-1448	500	120.00	15.61
1-1449	500	120.00	15.61
1-1450	500	120.00	15.61
1-1451	500	120.00	15.61
1-1452	500	120.00	15.61
1-1453	500	120.00	15.61
1-1454	500	120.00	15.61
1-1455	500	120.00	15.61

[fol. 24]



## Part Two—Continued.

Name and Residence	Number and Issue of Bond	Description			Total Claim
		Prin. Amt.	Interest Per Coupon	Interest Per Sec. 52 C. I. D. A.	
	1-1521	1,000	240.00	31.23	
	1-1522	1,000	240.00	31.23	
	1-1595	500	120.00	15.61	
	1-1596	500	120.00	15.61	
	1-1597	500	120.00	15.61	
	1-1598	500	120.00	15.61	
	1-1599	500	120.00	15.61	
	1-1600	500	120.00	15.61	
Total claim.....		\$20,000	\$4,800.00	\$634.89	\$25,434.89
C. A. Moss, 532 N. Highland Ave., Los Angeles, Calif.....					
	1-1372	1,000	240.00	32.30	
	1-1422	500	120.00	16.16	
	1-1423	500	120.00	16.16	
	1-1925	1,000	240.00	32.30	
	1-1926	1,000	240.00	32.30	
	1-1927	1,000	240.00	32.30	
	1-1928	1,000	240.00	32.30	
Total claim.....		\$6,000	\$1,440.00	\$193.82	\$7,633.82
[fol. 25]					
Unknown.....					
	1-536	1,000	210.00	120.75	
	1-587	1,000	210.00	120.75	
	1-538	1,000	210.00	120.75	
	1-735	500	150.00		
Total claim.....		\$3,500	\$780.00	\$362.25	\$4,642.25
Lynn Atkinson c/o Call and Murphy Attorneys at Law 514 Pacific Mutual Bldg. Los Angeles, Calif.		This creditor holds matured coupons aggregating \$1,065 in face amount and on which interest under Section 52 in the sum of \$298.20 accumulated to July 1, 1937. Of the coupons, those aggregating \$795.00 in face amount are appurtenant to bonds held by creditors who have accepted the plan and the remainder are appurtenant to bonds held by those creditors who have not accepted the plan.			
		Total claim \$1,363.20.			

[File endorsement omitted.]

[fol. 26] IN UNITED STATES DISTRICT COURT

No. 4575

[Title omitted]

ORDER APPROVING PETITION AS PROPERLY FILED AND FOR  
NOTICE TO CREDITORS—Filed September 21, 1937

Lindsay-Strathmore Irrigation District, having filed in this court its duly verified petition in the above entitled matter, which said petition sets forth a plan for composition and readjustment of its debts under Sections 81, 82 and 83 of Chapter 10 of the National Bankruptcy Law as amended, and to which said petition there is attached a list of all known creditors of the petitioner, together with their addresses so far as known to the petitioner and the description of their respective securities showing separately those who have accepted the plan of composition, together with their separate addresses, and the court having examined said petition and plan of composition and readjustment set forth therein, and having heard the oral testimony offered in support thereof, and being fully advised in the premises, finds, that the petition and plan for composition and debt readjustment set forth therein are presented in good faith and for the bona fide purpose of obtaining the relief therein prayed for, and that creditors of the petitioner owning not less than fifty-one per cent (51%) in amount of the securities affected by the plan, to wit, creditors owning approximately eighty-seven per cent (87%) of such securities, have in writing accepted said plan and consented to the filing of said petition, and that the petition and plan are in conformity with sections 81, 82 and 83 of Chapter 10 of the [fol. 27] National Bankruptcy Law as amended, and should be approved as properly filed.

It is Therefore Ordered, Adjudged and Decreed, that the said petition of Lindsay-Strathmore Irrigation District is hereby approved as properly filed under the provisions of said Chapter 10 of the National Bankruptcy Law as amended; that said petition complies with said Chapter 10 of said National Bankruptcy Law as amended and has been filed in good faith.

It is Further Ordered that the Post Office Building in the the City of Fresno, State of California, and Friday, the 3rd day of December, 1937, at the hour of 10 o'clock A. M. be

and the same are hereby fixed as the time and place for a hearing on said petition; and the Clerk of this court is hereby directed to give notice to creditors of the petitioner of the filing of the petition and its approval by this court as having been properly filed and of the time and place of hearing, and the court hereby prescribes the following as the form of notice to be given, to wit:

“Notice to Creditors

To the Creditors of Lindsay-Strathmore Irrigation District:

Notice is hereby given, that on the — day of September, 1937, the verified petition of Lindsay-Strathmore Irrigation District was duly filed in the office of the Clerk of the District Court of the United States in and for the Southern District of California, stating among other things that the District is insolvent and unable to meet its debts as they mature and that it desires to effect a composition and plan of debt readjustment whereby its bonded and other outstanding indebtedness will be reduced and refinanced pursuant to the provisions of Sections 81, 82, and 83 of Chapter 10 of the National Bankruptcy Law as Amended, and praying that the court take such other action under the Act mentioned as is necessary to fully effect such debt composition and readjustment. That the petition of said Lindsay-Strathmore Irrigation District and the proceedings for composition and readjustment of its debts as set forth therein have been approved by the court as properly filed under said Chapter 10 of said National Bankruptcy Law as Amended, and is now pending therein; that by order of the court duly entered in said proceedings, —, the — day of —, 1937, at the hour of — o'clock — M. of said day, and the Post Office Building, in the City of Fresno, State of California have been fixed as the time and place where, and at which said time and place, a hearing will be held for [fol. 28] the purpose of considering the plan of composition and debt readjustment as set forth in said petition, as well as any changes or modifications thereof which may be proposed or decreed to be necessary, or proper and for the further purpose of hearing any creditor of the District upon any controvertible matter in connection with the proposed composition and plan of debt readjustment, and the advisability of entering an order confirming the same.

The plan of debt readjustment materially affects the holders of all of the outstanding bonded indebtedness of the District and of any claims for interest appertaining thereto as it will, if put into effect, require the holders of such indebtedness to surrender the same and receive in exchange therefor the amount in cash provided for in the plan, that is to say, a sum equal to the sum of \$59978 for each dollar of the principal amount of each such bond, in full payment, discharge and satisfaction of all amounts of principal and interest payable on such bond under the terms thereof or by reason of the presentation of such bond or any appurtenant coupon as provided by section 52 of the 'California Irrigation District Act'; provided that if any coupon or coupons which matured on or prior to January 1, 1934, be not attached to or surrendered with the bond to which it is appurtenant, then the amount to be paid on such bond shall be reduced in an amount equal to 56.58 cents for each Dollar of the face amount of such missing coupon or coupons and if any coupon or coupons, which matured subsequent to January 1, 1934, be not attached to or surrendered with the bond to which it is appurtenant the amount to be paid on such bond shall be reduced by the face amount of such missing coupon or coupons.

Any creditor of petitioner affected by the plan may file an answer to the petition controverting any of the material allegations therein and setting up any objection that he may have to the plan of composition, at any time at least ten (10) days before the date fixed for said hearing. All creditors may be heard on the acceptance or rejection of the plan for composition and debt readjustment at the hearing, and are required to make proof and evidence of their claims by filing a verified statement thereof with the Clerk of this court on or before the above mentioned date fixed for hearing.

Creditors of the District are hereby referred to the petition on file in the above entitled proceeding and to the exhibits attached thereto and the order of the Court for details and particulars of the proposed plan of composition and debt readjustment, and of the proceedings taken and to be taken herein.

Dated —, 1937.

—, Clerk of the United States District Court."



[fol. 29] • It is Further Ordered, that the notice above set forth be published once a week for at least three (3) successive weeks in the Visalia Times-Delta, a newspaper of general circulation, published at Visalia, California, and within the jurisdiction of the court, and also be published at least once a week for three (3) successive weeks in — Los Angeles Daily Journal a newspaper published in the City of Los Angeles, State of California, a newspaper of general circulation, which is hereby designated as a newspaper having a general circulation among bond dealers and bond holders, and that no other or further publication of said notice shall be required.

It is Further Ordered, that a copy of said notice be mailed, postage prepaid, to each creditor of petitioner named in the petition, at the addresses of such creditors given in the petition, it appearing that the addresses of all the known creditors of the petitioner are set forth in the petition.

It is Further Ordered that the first publication of said notice shall be made and the mailing of copies thereof as herein ordered shall be completed at least sixty (60) days before the date fixed for the hearing.

It is Further Ordered and Adjudged, that at the hearing upon the petition held at the time and place herein and in the said notice to creditors set forth, any creditor may be heard upon the acceptance or rejection of the plan as proposed by the petition and that at any time not less than ten (10) days prior to the time fixed for hearing, may file an answer to the hearing controverting any of the material allegations therein and setting upon any objection he may have to the plan of composition and debt readjustment.

Dated September 21, 1937.

Leon R. Yankwich, Judge.

gk:m.

9/21/37.

[File endorsement omitted.]

[fol. 30] IN UNITED STATES DISTRICT COURT

No. 4575

[Title omitted]

ORDER TO SHOW CAUSE WHY INJUNCTION SHOULD NOT ISSUE  
AND WHY INTERLOCUTORY DECREE MAKING PLAN TEMPORARILY  
OPERATIVE SHOULD NOT BE ENTERED—Filed September 22, 1937

To the Creditors of the Lindsay-Strathmore Irrigation District, Petitioner in the Above Entitled Cause:

You and Each of You Are Hereby Notified that the Lindsay-Strathmore Irrigation District has filed in the above entitled court and proceeding its duly verified petition alleging that it is insolvent and unable to pay its debts as they mature and that it desires to affect a plan for the composition and readjustment of its debts under the provisions of Chapter 10 of the National Bankruptcy Act as amended and that an order has been made and entered therein finding that said petition has been filed in good faith and approving said petition as properly filed and fixing a time and place for the hearing thereon, and good cause appearing to the court,

It is Hereby Ordered that you and each of you show cause, if any you have, upon Monday, the 11th day of October, 1937, at the court room of the above entitled court at the Post Office Building in the City of Fresno, State of California, at the hour of 2:00 o'clock P. M. of said day, or as soon thereafter as counsel may be heard, why an order should not be made and entered herein enjoining and staying, pending the determination of said matter, the commencement or continuation of suits, actions or proceedings against the petitioner, or any officer or inhabitant thereof, on account of the securities affected by the plan as set forth [fol. 31] in said petition or to enforce any lien or to enforce the levy of taxes or assessments for the payment of obligations under such securities; and to also show cause, if any you have, why an interlocutory decree should not be entered herein ordering that the plan shall be temporarily operative with respect to all securities affected thereby and that the payment of principal or interest, or both, of or on account of such securities shall be temporarily postponed or extended or otherwise adjusted in the same manner and

upon the same terms as if such plan had been finally confirmed and put into effect.

It is Further Ordered that notice of the issuance of this order to show cause and of the time and place fixed for hearing the same be given to the creditors of said petitioner by mailing a copy of this order to show cause, postage prepaid, to each creditor of the petitioner named in the petition, at the address of such creditor given in the petition, not less than ten days prior to the date fixed for the hearing of said order to show cause.

It is further ordered that pending the hearing of this order to show cause the creditors of said petitioner, and their agents or attorneys, and each of them, be and he is hereby enjoined and restrained from commencing or continuing any suit, action or proceeding against the petitioner or any officer or inhabitant thereof, on account of the securities affected by the said plan of composition and debt readjustment, or to enforce any lien or to enforce the levy of taxes or assessments for the payment of any obligation under such securities.

Dated September 22nd, 1937.

Leon R. Yankwich, District Judge.

gk:m.

9/21/37.

[File endorsement omitted.]

---

[fol. 32] IN UNITED STATES DISTRICT COURT

No. 4575

[Title omitted]

NOTICE OF MOTION TO DISMISS PETITION—Filed October 2,  
1937

To Lindsay-Strathmore Irrigation District, Petitioner, and  
to James R. McBride and Mitchell, Silberberg, Roth &  
Knupp, Its Attorneys:

You and each of you will please take notice that on Monday the 11th day of October, at the hour of 2 o'clock p. m. of that day, in the court room of the above entitled court, in the Post Office Building in Fresno, California, respondents

Milo W. Bekins and Reed J. Bekins, as trustees appointed by the will of Martin Bekins, deceased, Milo W. Bekins and Reed J. Bekins, as trustees appointed by the will of Katherine Bekins, deceased, J. R. Mason, James Irvine, A. Heber Winder, trustee for Eva A. Parrington trust, and C. A. Moss, will move the above entitled court for an order dismissing the petition herein upon the grounds set forth in the annexed copy of motion, which will then be made. Reference will be made to the files, records and pleadings in said cause and to the annexed memorandum of points and authorities.

Dated September 30th, 1937.

W. Coburn Cook, Attorney for Milo W. Bekins, et al.,  
Respondents.

[fol. 33] IN UNITED STATES DISTRICT COURT

No. 4575

[Title omitted]

MOTION TO DISMISS—Filed October 2, 1937

Come now Milo W. Bekins and Reed J. Bekins, as trustees appointed by the will of Martin Bekins, deceased, Milo W. Bekins and Reed J. Bekins, as trustees appointed by the will of Katherine Bekins, deceased, J. R. Mason, James Irvine, A. Heber Winder, trustee for Eva A. Parrington trust, and C. A. Moss, and file their motion to dismiss the petitioner's petition filed herein, and as grounds for said motion state:

# I

Allege that they own bonds of the Lindsay-Strathmore Irrigation District, petitioner, as set forth in petitioner's petition, in the following principal amounts, some of which is past due, with past due interest, as stated therein:

Milo W. Bekins and Reed J. Bekins, as trustees appointed by the will of Martin Bekins, deceased, \$72,500.00;

Milo W. Bekins and Reed J. Bekins, as trustees appointed by the will of Katherine Bekins, deceased, \$14,500.00;

J. R. Mason, \$30,000.00;

James Irvine, \$18,500.00;



A. Heber Winder, trustee for Eva A. Parrington trust,  
\$1000.00;

C. A. Moss, \$6000.00.

## II

That this court is without jurisdiction of the subject matter of the proceeding.

## III

That said petition does not state facts sufficient to constitute a good and sufficient petition under Chapter 10 of the Bankruptcy Act of 1898, nor does it appear therefrom that the petitioner irrigation district is a bankrupt within the terms of Sections 81 to 84, inclusive, of the Bankruptcy Act of 1898.

## IV

That this court is without jurisdiction to entertain the petitioner's petition and the plan of readjustment filed therewith or to hear or determine this cause because this proceeding and the bankruptcy act under which this proceeding is brought, being Public No. 302, approved August 16th, 1937, is unconstitutional and void and affects the property rights of these respondents for the following reasons, to-wit:

1. Under Section 8, Article I of the Constitution of the United States, Congress has power to pass uniform laws on the subject of bankruptcy throughout the United States, and said Act is not a uniform law on the subject of bankruptcy throughout the United States.

2. That under said act private property may be taken for public use without just compensation, contrary to the provisions of Amendment V of the Constitution of the United States, and the petitioner's petition and the plan of readjustment filed therewith propose to take respondents' property without just compensation.

3. That under the Constitution of the United States and the plan of government set forth therein, the Federal Government is a government of delegated powers, and no power has been delegated to Congress to pass legislation such as said Act of Congress, being Sections 81 to 84 inclusive, of the

Bankruptcy Act of 1898, regulating the rights of citizens, and particularly these respondents, against the states or state governmental agencies in the manner therein provided.

4. That said act was passed in violation of the reserved rights of states of the United States as guaranteed to the [fol. 35] states by Article X of the Federal Constitution, and because the passage of said act is a violation of the rights of citizens, and particularly these respondents, guaranteed and reserved to them by Amendment X to the Constitution.

5. Said act attempts to subject state governmental agencies to the jurisdiction of federal courts contrary to the plan and scheme of government, as set out in the Constitution of the United States.

6. Said act in other respects violates the Constitution of the United States.

### V

That petitioner herein, Lindsay-Strathmore Irrigation District, is without legal capacity to make its said petition, and that its proceeding under said petition is in violation of Article I, Section 16 of the Constitution of the State of California, Article I, Section 21 of said Constitution, Article XIII, Section 6 of said Constitution, Article IV, Section 1 of said Constitution.

Wherefore, respondents pray that the petition of the Lindsay-Strathmore Irrigation District be dismissed.

Dated September 30th, 1937.

W. Coburn Cook, Attorney for Milo W. Bekins and  
Reed J. Bekins, et al., Respondents.

[fol. 36] IN UNITED STATES DISTRICT COURT

No. 4575

AFFIDAVIT OF SERVICE BY MAIL—Filed October 2, 1937

STATE OF CALIFORNIA,

County of Stanislaus, ss:

Jeanette Ofelth, being first duly sworn, says:

That she is a citizen of the United States; that she resides in the City of Turlock, County of Stanislaus, State of Cali-

fornia, in the county in which the mailing hereafter referred to took place; that she is over the age of 18 years and not interested in the above entitled matter; that on the 30th day of September, 1937, she placed a full, true and correct copy of the annexed Notice of Motion to Dismiss Petition, Motion to Dismiss, and Memorandum of Points and Authorities in each of two envelopes, duly sealed, and deposited the same in the United States Post Office at Turlock, California, with postage thereon fully prepaid, addressed to

Mr. James R. McBride, Attorney at Law, Lindsay, California;

Mitchell, Silberberg, Roth & Knupp, Attorneys at Law, 603 Roosevelt Building, Los Angeles, California.

That said James R. McBride and Mitchell, Silberberg, Roth & Knupp are attorneys of record for the above named Lindsay-Strathmore Irrigation District. That there is regular daily communication by mail between Lindsay, California and Turlock, California, and between Los Angeles and Turlock, California.

Jeanette Ofelth.

Subscribed and sworn to before me this 30th day of September, 1937. Gilbert Moody, Notary Public in and for the County of Stanislaus, State of California. (Seal.)

[File endorsement omitted.]

---

[fol. 37] IN UNITED STATES DISTRICT COURT

No. 4575

[Title omitted]

MOTION TO DISMISS—Filed October 11, 1937

Now comes James H. Jordan and states that he is a creditor of the above entitled irrigation district, owning bonds of said district in the sum of \$13,500.00, as described in the petition herein, together with past due coupons and interest, as therein described, and he joins in the motion of Milo W. Bekins, et al., for dismissal, and moves this Honorable Court

to grant said motion and to dismiss the proceedings herein upon all of the grounds set forth in the notice of motion and motion of said Milo W. Bekins, et al. herein.

W. Coburn Cook, Attorney for James H. Jordan.

Service and receipt of copy of the foregoing Motion to Dismiss admitted this 11th day of October, 1937, and notice thereof is waived.

Mitchell, Silberberg, Roth & Knupp, by Guy Knupp,  
James R. McBride, Attorneys for Lindsay-  
Strathmore Irrigation District.

-[File endorsement omitted.]

[fol. 38] IN UNITED STATES DISTRICT COURT

No. 4575

[Title omitted]

RETURN OF CERTAIN CREDITORS SHOWING CAUSE WHY AN IN-  
JUNCTION SHOULD NOT ISSUE AND WHY AN INTERLOCUTORY  
DECREE MAKING PLAN TEMPORARILY OPERATIVE SHOULD  
NOT BE ENTERED—Filed October 11, 1937

Come now Milo W. Bekins and Reed J. Bekins, as trustees appointed by the will of Martin Bekins, deceased, Milo W. Bekins and Reed J. Bekins, as trustees appointed by the will of Katherine Bekins, deceased, J. R. Mason, James Irvine, A. Heber Winder, Trustee for Eva A. Parrington trust, and C. A. Moss, and by way of return to the order to show cause issued herein September 22, 1937, setting the time for showing cause at 2 p. m. Monday the 11th day of October, 1937, at the court room of this court, in the Post Office Building in the City of Fresno, State of California, said creditors show cause why an injunction should not issue as prayed for and why an interlocutory decree making the plan temporarily operative should not be entered, and in this connection allege:

I

That they are creditors of Lindsay-Strathmore Irrigation District and are the owners and holders respectively



of the bonds stated in the petition, together with the unpaid interest coupons and interest as therein stated, and that some of the bonds described are past due, and that all of the past due bonds and interest coupons have been presented to the treasurer of the Lindsay-Strathmore Irrigation District in accordance with the provisions of Section 52 of the California Irrigation District Act, and payment [fol. 39] thereof has been refused, and that none of these respondents have been notified that funds are available for payment thereof, and that the amount past due and unpaid upon the principal of said bonds is the sum of approximately \$142,500.00, and the amount of interest coupons unpaid and past due is approximately the sum of \$28,125.00;

That these respondents are severally the owners of bonds of said district, described as aforesaid, in the following principal amounts, to-wit:

Milo W. Bekins and Reed J. Bekins, as trustees appointed by the will of Martin Bekins, deceased, \$72,500.00;

Milo W. Bekins and Reed J. Bekins, as trustees appointed by the will of Katherine Bekins, deceased, \$14,500.00;

J. R. Mason, \$30,000.00;

James Irvine, \$18,500.00;

A. Heber Winder, trustee for Eva A. Parrington Trust, \$1000.00;

C. A. Moss, \$6000.00;

that these respondents own in the aggregate more than 75% of all of the outstanding bonds of the Lindsay-Strathmore Irrigation District, except as to those which it is stated in the petition are owned by the Reconstruction Finance Corporation, and as to the bonds stated in the petition to be owned by the Reconstruction Finance Corporation these respondents allege that the same are fully paid and no longer outstanding; and in this regard said respondents further state that the acquiring of bonds or other evidence of indebtedness of the Lindsay-Strathmore Irrigation District by the Reconstruction Finance Corporation is not authorized by law, or otherwise, than in accordance with Title 43, Section 403, U. S. Code.

That certain actions have been heretofore commenced and were commenced prior to the institution of these proceedings by certain of these respondents and the said causes

[fol. 40] are pending in the Superior Court of the State of California, in and for the County of Tulare, to-wit:

An action entitled "Milo W. Bekins and Reed J. Bekins as trustees appointed by the will of Martin Bekins, deceased, Milo W. Bekins and Reed J. Bekins, as trustees appointed by the will of Katherine Bekins, deceased, Plaintiffs, vs. Lindsay-Strathmore Irrigation District, Defendant", No. 26805;

An action entitled "James Irvine, Plaintiff, vs. Lindsay-Strathmore Irrigation District, Defendant", No. 26778;

An action entitled "C. A. Moss, Plaintiff, vs. Lindsay-Strathmore Irrigation District, Defendant", No. 26693;

and that in the first of said causes the complaint was in the form hereunto annexed marked Exhibit A, and made a part hereof by this reference, and that the complaints in each of the other said causes was and is in substantially the same form; that summons have been issued out of each of said causes and served upon the defendant district and that the district has in each of said causes demurred thereto and the demurrers have been presented to the court and submitted to the court for its decision; that said causes of action have their objective, as shown by the pleadings, the staying of the statute of limitations, and the adjudging of the indebtedness due the several plaintiffs therein.

## II

That prior to the commencement of these proceedings the said respondents, in accordance with the provisions of Sections 39, 39b and 39c of the California Irrigation District Act, made demand upon the Board of Supervisors and officers of the County of Tulare, State of California, to perform their several duties under said sections in relation to the levy of assessments upon lands within the Lindsay-Strathmore Irrigation District, as provided by said statute, and upon the refusal of said officers to perform their said duties, filed a petition for writ of mandate in the Superior Court of the State of California, in and for the [fol. 41] County of Tulare, which said petition was and is in words and figures as set forth in Exhibit B hereunto annexed and made a part hereof by this reference, and that upon the presentation of the same to the said Superior Court, the court caused to be issued an alternative writ

of mandate, which said alternative writ was and is in words and figures as set forth in Exhibit C hereunto annexed and made a part hereof by this reference.

### III

That subsequently the said alternative writ of mandate was served upon the respondents therein named and the matter came on for hearing at the time stated in said alternative writ of mandate and was duly continued by the court until the 25th day of September, 1937, whereupon the respondents named therein made return to said alternative writ by way of demurrer thereto, in words and figures as set forth in Exhibit D hereunto annexed and made a part hereof by this reference, and at said hearing the respondents, through their counsel, moved the said court for an order joining the said Lindsay-Strathmore Irrigation District as a party respondent to said proceedings under the provisions of Section 389 of the Code of Civil Procedure of the State of California, which said motion was granted, whereupon the said Lindsay-Strathmore Irrigation District filed a demurrer to the petition in the same form as that filed by the other respondents heretofore mentioned, and further filed a special return thereto, in words and figures set forth in Exhibit E hereunto annexed and made a part hereof by this reference, whereupon the said Superior Court made an order suspending further proceedings in said cause during the pendency of the proceedings in the above entitled cause, in words and figures as hereunto annexed, marked Exhibit F, and made a part hereof by this reference.

### IV

That the said Lindsay-Strathmore Irrigation District has given notice of a motion to suspend the proceedings in [fol. 42] the other said causes above enumerated in paragraph I hereof on the grounds of the pendency of the proceedings in the above entitled cause.

### V

That none of said actions should be stayed or enjoined for the following reasons:

(a) That none of them are actions or proceedings contemplated by subsection c of section 83 of the Bankruptcy

Act of 1898, and further, that the action against the Board of Supervisors of Tulare County, California, relates to the exercise of the political or governmental powers of the State of California, County of Tulare, and comes within the prohibitions of subsection i of section 83 of the act, and the injunction and order sought would violate the provisions of subsection a of subsection c of section 83 of the Bankruptcy Act of 1898 in that it would interfere with the political or governmental powers of the Lindsay-Strathmore-Irrigation District.

(b) Because Chapter 10 of the Bankruptcy Act of 1898, under which these proceedings are prosecuted, is unconstitutional and void for the following reasons:

(1) Under Section 8, Article I of the Constitution of the United States, Congress has power to pass uniform laws on the subject of bankruptcy throughout the United States, and said Act is not a uniform law on the subject of bankruptcy throughout the United States.

(2) That under said act private property may be taken for public use without just compensation, contrary to the provisions of Amendment V of the Constitution of the United States, and the petitioner's petition and the plan of readjustment filed therewith propose to take respondents' property without just compensation.

[fol. 43] (3) That under the Constitution of the United States and the plan of government set forth therein, the Federal Government is a government of delegated powers, and no power has been delegated to Congress to pass legislation such as said Act of Congress, being Sections 81 to 84, inclusive, of the Bankruptcy Act of 1898, regulating the rights of citizens, and particularly these respondents, against the states or state governmental agencies in the manner therein provided.

(4) That said act was passed in violation of the reserved rights of states of the United States as guaranteed to the states by Article X of the Federal Constitution, and because the passage of said act is a violation of the rights of citizens, and particularly these respondents, guaranteed and reserved to them by Amendment X to the Constitution.

(5) Said act attempts to subject state governmental agencies to the jurisdiction of federal courts contrary to the



plan and scheme of government, as set out in the Constitution of the United States.

(6) Said act in other respects violates the Constitution of the United States.

(c) Because the petition herein does not state facts sufficient to constitute a good and valid petition under said statute.

[fol. 44] (d) Because inasmuch as respondents own more than 75% in amount of the outstanding unpaid bonds of the Lindsay-Strathmore Irrigation District it is an impossibility for the petitioner to obtain the consent of 51% of said class of indebtedness.

(e) Because each separate bond and coupon constitutes a separate class under the provisions of Section 52 of the California Irrigation District Act providing that bonds and coupons shall be paid in the order of presentation.

(f) Because the orders sought interfere with vested rights of the respondents, and the orders sought are prohibited by subsection c of section 83 of the Bankruptcy Act of 1898, providing for an injunction "*except where rights have become vested*"; that in this regard respondents refer to all of the allegations set forth in Exhibits A and B, and incorporate said allegations herein by this reference and re-allege each and every allegation contained in said complaint and petition for writ of mandate, showing thereby and now alleging that these respondents became entitled to and were vested with the right to demand and to have performed the duties specified by Sections 39, 39b and 39c of the California Irrigation District Act of the State of California at the time when the Board of Directors of said Lindsay-Strathmore Irrigation District failed to levy the assessments specified and referred to in said petition for writ of mandate in the years 1933, 1935 and 1936 and before the filing or commencement of these proceedings, and the property rights which accrued or would have accrued and the assessments which were made or should have been made became and are rights in trust vested in these respondents.

(g) Because the obligations of the bonds owned and held by respondents, as aforesaid, are obligations of the State of California, which the State of California has by statute pro-

vided shall be met out of certain revenues to be derived [fol. 45] partly from assessments to be levied by the Board of Supervisors of Tulare County, and constitute political and/or governmental powers and duties of the State of California and of the Board of Supervisors of Tulare County.

(h) That the plan proposed is inherently defective, unfair and violates the Constitution of the United States in that it proposes that one class of creditors, to-wit: Reconstruction Finance Corporation, shall receive bonds and that another class of creditors, to-wit: these respondents, shall receive cash.

Wherefore, said respondents, Milo W. Bekins and Reed J. Bekins, as trustees appointed by the will of Martin Bekins, deceased, Milo W. Bekins and Reed J. Bekins, as trustees appointed by the will of Katherine Bekins, deceased, J. R. Mason, James Irvine, A. Heber Winder, trustee for Eva A. Parrington trust, and C. A. Moss, pray that no order staying or enjoining, pending the determination of the cause in the above entitled matter, the commencement or continuance of suits or actions or proceedings against the petitioner or any officer or inhabitant thereof on account of the securities affected by the plan, as set forth in said petition, or to enforce any lien or to enforce the levy of taxes or assessments for the payment of obligations under said securities, or to enjoin or stay the prosecution of the suits now being maintained, as aforesaid, by these respondents, be granted, and also that no interlocutory decree be entered herein ordering that the plan be temporarily operative with respect to any securities affected by the plan or providing that the payment of interest or principal, or both, of or on account of said indebtedness be extended or otherwise adjusted, and that the temporary restraining order contained in said order to show cause be set aside and vacated, and that said respondents be not enjoined from prosecuting their said actions.

W. Coburn Cook, Attorney for Milo W. Bekins, et al.,  
Respondents.

[fol. 46] *Duly sworn to by Reed J. Bekins. Jurat omitted in printing.*

Service and receipt of copy of the foregoing Return admitted this 11th day of October, 1937.

Mitchell, Silberberg, Roth & Knupp, by Guy Knupp,  
Jas. B. McBride, Attorneys for Lindsay-Strath-  
more Irr. District.

[fol. 47]

EXHIBIT "A" TO RETURN

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND  
FOR THE COUNTY OF TULARE

No. 26805

**MIL0 W. BEKINS and REED J. BEKINS**, as Trustees Appointed  
by the Will of Martin Bekins, Deceased, Milo W. Bekins  
and Reed J. Bekins, as Trustees Appointed by the Will  
of Katherine Bekins, Deceased, Plaintiffs,

VS.

**LINDSAY-STRATHMORE IRRIGATION DISTRICT**, Defendant

COMPLAINT

Plaintiffs complain and allege:

I

That Lindsay-Strathmore Irrigation District was duly organized on the 16th day of October, 1915, under and by virtue of the laws of the State of California, and ever since has been and now is an irrigation district organized and existing under and by virtue of the laws of the State of California.

II

That said Lindsay-Strathmore Irrigation District duly issued, sold and delivered its interest-bearing bonds, designated as first issue, dated July 1, 1916, in the principal amount of \$1,316,000; and second issue, dated October 1, 1918, in the principal amount of \$245,000, with interest coupons attached.

III

That said bonds were in the denomination of \$1000.00 and \$500.00, and each of them by its terms is payable to bearer,

and the same bear interest at the rate of 6% per annum, evidenced by interest coupons attached thereto, payable January 1st and July 1st of each year.

[fol. 48]

#### IV

That plaintiffs, Milo W. Bekins and Reed J. Bekins, are trustees appointed by the will of Martin Bekins, deceased, confirmed by decree of the Superior Court of the State of California, in and for the City and County of San Francisco, dated April 29, 1935.

#### V

That plaintiffs, as trustees appointed by the will of Martin Bekins, deceased, are the owners and holders of certain of said bonds in the principal amount of \$72,500.00, and of the unpaid coupons attached; that certain coupons thereof in the principal amount of \$12,795.00, and certain of said bonds in the amount of \$44,500.00 matured and were presented for payment to the treasurer of said district and payment thereof was refused, and the same are in the respective amounts and bore the respective bond numbers as set forth and described in Exhibit A hereunto attached and made a part hereof by this reference.

#### VI

That all of said past due bonds and coupons were duly presented to the treasurer of said district for payment as shown in said exhibit; that notice has not been given that funds are available for payment thereof, and the same remain wholly unpaid.

And as a second, separate and distinct cause of action, plaintiffs allege:

#### I

That Lindsay-Strathmore Irrigation District was duly organized on the 16th day of October, 1915, under and by virtue of the laws of the State of California, and ever since has been and now is an irrigation district organized and existing under and by virtue of the laws of the State of California.



## II

That said Lindsay-Strathmore Irrigation District duly [fol. 49] issued, sold and delivered its interest bearing bonds, designated as first issue, dated July 1, 1916, in the principal amount of \$1,316,000; and second issue, dated October 1, 1918, in the principal amount of \$245,000, with interest coupons attached.

## III

That said bonds were in the denomination of \$1000.00 and \$500.00, and each of them by its terms is payable to bearer, and the same bear interest at the rate of 6% per annum, evidenced by interest coupons attached thereto, payable January 1st and July 1st of each year.

## IV

That plaintiffs, Milo W. Bekins and Reed J. Bekins, are trustees appointed by the will of Katherine Bekins, deceased, confirmed by decree of the Superior Court of the State of California, in and for the county of Los Angeles, May 31, 1936.

## V

That plaintiffs, as trustees appointed by the will of Katherine Bekins, deceased, are the owners and holders of certain of said bonds in the principal amount of \$15,500.00, and of the unpaid coupons attached; that certain coupons thereof in the principal amount of \$2775.00 and certain of said bonds in the principal amount of \$7500.00 matured and were presented for payment to the treasurer of said district and payment thereof was refused, and the same are in the respective amounts and bore the respective bond numbers as set forth and described in Exhibit B hereunto attached and made a part hereof by this reference.

## VI

That all of said past due bonds and coupons were duly presented to the treasurer of said district for payment as shown in said exhibit; that notice has not been given that

funds are available for payment thereof, and the same remain wholly unpaid.

[fol. 50] Wherefore, plaintiffs demand judgment against defendant

1. For judgment in favor of Milo W. Bekins and Reed J. Bekins, as trustees appointed by the will of Martin Bekins, deceased, in the sum of \$44,500.00, amount of said bonds, and the sum of \$12,795.00, amount of said coupons, together with interest thereon at the rate of 7% per annum from the dates of presentation; for costs of suit; for such other and further relief as may be just.

2. For judgment in favor of Milo W. Bekins and Reed J. Bekins, as trustees appointed by the will of Katherine Bekins, deceased, in the sum of \$7500.00, amount of said bonds, and the sum of \$2775.00, amount of said coupons, together with interest thereon at the rate of 7% per annum from the dates of presentation; for costs of suit; for such other and further relief as may be just.

W. Coburn Cook, Attorney for Plaintiffs.

STATE OF CALIFORNIA,

City and County of San Francisco, ss:

Reed J. Bekins, being first duly sworn, says:

That he is one of the plaintiffs in the foregoing complaint; that he has read said complaint and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

Reed J. Bekins.

Subscribed and sworn to before me this 13th day of May, 1937. Minnie F. Dobbin, Notary Public in and for the City and County of San Francisco, State of California. (Seal.)

## EXHIBIT "A" TO COMPLAINT

## Par. I

Bonds which have matured:

Bond No.	Issue	Date due	Date presented	Amount
263.....	First	July 1, 1933	Nov. 7, 1933	\$1,000.
264.....	"	"	"	"
265.....	"	"	"	"
266.....	"	"	"	"
272.....	"	"	"	"
273.....	"	"	"	"
274.....	"	"	"	"
354.....	"	July 1, 1934	Aug. 2, 1934	"
355.....	"	"	"	"
356.....	"	"	"	"
439.....	"	July 1, 1935	July 8, 1935	"
440.....	"	"	"	"
441.....	"	"	"	"
454.....	"	"	"	"
455.....	"	"	"	"
536.....	"	July 1, 1936	July 1, 1936	"
539.....	"	"	"	"
538.....	"	"	"	"
537.....	"	"	"	"
540.....	"	"	"	"
541.....	"	"	"	"
545.....	"	"	"	"
546.....	"	"	"	"
558.....	"	"	"	"
559.....	"	"	"	"
560.....	"	July 1, 1933	Nov. 7, 1933	\$500.
305.....	"	"	"	"
307.....	"	"	"	"
332.....	"	"	"	"
333.....	"	"	"	"
334.....	"	"	"	"
335.....	"	"	"	"
336.....	"	"	"	"
410.....	"	July 1, 1934	Aug. 2, 1934	"
411.....	"	"	"	"
412.....	"	"	"	"
413.....	"	"	"	"
414.....	"	"	"	"
483.....	"	July 1, 1935	July 8, 1935	"
483.....	"	"	"	"
490.....	"	"	"	"
514.....	"	"	"	"
516.....	"	"	"	"
517.....	"	"	"	"
518.....	"	"	"	"
519.....	"	"	"	"
520.....	"	"	"	"
521.....	"	"	"	"
522.....	"	"	"	"
523.....	"	"	"	"
524.....	"	"	"	"
525.....	"	"	"	"
577.....	"	July 1, 1936	July 1, 1936	"
585.....	"	"	"	"
586.....	"	"	"	"
587.....	"	"	"	"
588.....	"	"	"	"
589.....	"	"	"	"
590.....	"	"	"	"
591.....	"	"	"	"
592.....	"	"	"	"

Total.....

\$44,500

[fol. 52]

## Par. II

## Coupons which have matured:

1 coupon in the amount of \$30.00, 6% coupons, which matured July 1, 1933, presented for payment November 7, 1933, detached from each of the following bonds of the first issue, to-wit: bonds numbered 263, 264, 265, 266, 272, 273, 274. Total, \$210.00.

3 Coupons, in the amount of \$30.00 each, 6% coupons, which matured July 1, 1933, January 1, 1934 and July 1, 1934, and were presented for payment respectively July 1, 1933, January 18, 1934 and July 17, 1934, detached from each of the following bonds of the first issue, to-wit: bonds numbered 354, 355, 356. Total, \$270.00.

5 Coupons in the amount of \$30.00 each, 6% coupons, which matured July 1, 1933, January 1, 1934, July 1, 1934, January 1, 1935, July 1, 1935, and were presented for payment respectively July 1, 1933, January 18, 1934, July 17, 1934, January 3, 1935, and July 8, 1935, detached from each of the following bonds of the first issue, to-wit, bonds numbered 439, 440, 441, 454, 455. Total, \$750.00.

7 coupons in the amount of \$30.00 each, 6% coupons, which matured July 1, 1933, January 1, 1934, July 1, 1934, January 1, 1935, July 1, 1935, January 1, 1936, July 1, 1936, and were presented for payment respectively July 1, 1933, January 18, 1934, July 17, 1934, January 3, 1935, July 8, 1935, January 1, 1936, and July 1, 1936, detached from each of the following bonds of the first issue, to-wit: bonds numbered 526, 532, 536, 537, 538, 540, 541, 545, 546, 558, 559, 560. Total, \$2520.00.

8 coupons in the amount of \$30.00 each, 6% coupons, which matured July 1, 1933, January 1, 1934, July 1, 1934, January 1, 1935, July 1, 1935, January 1, 1936, July 1, 1936, and January 1, 1937, which were presented for payment respectively July 1, 1933, January 18, 1934, July 17, 1934, January 3, 1935, July 8, 1935, January 1, 1936, July 1, 1936, and January 1, 1937, detached from each of the following bonds of the first issue, to-wit: bonds numbered 647, 648, 649, 650, 749. Total, \$1200.00.

[fol. 53] 8 coupons in the amount of \$30.00 each, 6% coupons, which matured July 1, 1933, January 1, 1934, July 1, 1934, January 1, 1935, July 1, 1935, January 1, 1936, July 1, 1936, January 1, 1937, which were presented for payment



respectively July 1, 1933, January 18, 1934, July 2, 1934, January 1, 1935, July 8, 1935, January 1, 1936, July 1, 1936, January 1, 1937, detached from each of the following bonds of the first issue, to-wit: bonds numbered 750, 751, 752, 995, 996, 997, 1238, 1942, 1943, 1944, 1945, 1946. Total, \$2880.00.

1 coupon in the amount of \$15.00, 6% coupon, which matured July 1, 1933, presented for payment November 7, 1933, detached from each of the following bonds of the first issue, to-wit: bonds numbered 305, 307, 332, 333, 334, 335, 336. Total, \$105.00.

3 coupons in the amount of \$15.00 each, 5% coupons, which matured July 1, 1933, January 1, 1934, July 1, 1934, and were presented for payment respectively July 1, 1933, January 18, 1934, and July 17, 1934, detached from each of the following bonds of the first issue, to-wit: bonds numbered 410, 411, 412, 413, 414. Total, \$225.00.

5 coupons in the amount of \$15.00 each, 6% coupons, which matured July 1, 1933, January 1, 1934, July 1, 1934, January 1, 1935, July 1, 1935, and were presented for payment respectively July 1, 1933, January 18, 1934, July 17, 1934, January 3, 1935, and July 8, 1935, detached from each of the following bonds of the first issue, to-wit: bonds numbered 482, 483, 499, 514, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525. Total, \$1050.00.

7 coupons in the amount of \$15.00 each, 6% coupons, which matured July 1, 1933, January 1, 1934, July 1, 1934, January 1, 1935, July 1, 1935, January 1, 1936, July 1, 1936, and were presented for payment respectively July 1, 1933, January 18, 1934, July 17, 1934, January 3, 1935, July 8, 1935, January 1, 1936, and July 1, 1936, detached from each [fol. 54] of the following bonds of the first issue, to-wit: bonds numbered 577, 585, 586, 587, 588, 589, 590, 591, 592. Total, \$945.00.

8 coupons in the amount of \$15.00 each, 6% coupons, which matured July 1, 1935, January 1, 1934, July 1, 1934, January 1, 1935, July 1, 1935, January 1, 1936, July 1, 1936, January 1, 1937, and were presented for payment respectively July 1, 1933, January 18, 1934, July 17, 1934, January 3, 1935, July 8, 1935, January 1, 1936, July 1, 1936, January 1, 1937, detached from each of the following bonds of the first issue, to-wit: Bonds numbered 682, 683, 686, 687, 688, 689, 690, 691, 733, 734, 781, 782, 783, 785, 787, 788, 817, 818, 820, 821, and 936. Total, \$2640.00.

[fol. 55]

## EXHIBIT "B" TO COMPLAINT

## Par. I

Bonds which have matured:

Bond No.	Issue	Date	Date presented	Amount
385.....	First	July 1, 1934	Aug. 2, 1934	\$500.00
386.....	"	"	"	"
387.....	"	"	"	"
388.....	"	"	"	"
415.....	"	"	"	"
416.....	"	"	"	"
417.....	"	"	"	"
418.....	"	"	"	"
419.....	"	"	"	"
420.....	"	July 1, 1935	July 8, 1935	"
481.....	"	"	"	"
480.....	"	"	"	"
508.....	"	"	"	"
509.....	"	"	"	"
515.....	"	"	"	"
Total.....				\$7,500.00

## Par. II

Coupons which have matured:

3 coupons in the amount of \$15.00 each, 6% coupons, which matured July 1, 1933, January 1, 1934, July 1, 1934, and were presented for payment respectively July 1, 1933, January 18, 1934 and July 17, 1934, detached from each of the following bonds of the first issue, to-wit: bonds numbered 385, 386, 387, 388, 415, 416, 417, 418, 419, 420. Total, \$450.00.

5 coupons in the amount of \$15.00 each, 6% coupons, which matured July 1, 1933, January 1, 1934, July 1, 1934, January 1, 1935, July 1, 1935, and were presented for payment respectively July 1, 1933, January 18, 1934, July 17, 1934, January 3, 1935, and July 8, 1935, detached from each of the following bonds of the first issue, to-wit: bonds numbered 480, 481, 508, 509, 515. Total, \$375.00.

8 coupons in the amount of \$15.00 each, 6% coupons, which matured July 1, 1933, January 1, 1934, July 1, 1934, January 1, 1935, July 1, 1935, January 1, 1936, July 1, 1936, January 1, 1937, and were presented for payment respectively July 1, 1933, January 18, 1934, July 17, 1934, January 3, 1935, July 8, 1935, January 1, 1936, July 1, 1936, and January 1, 1937, detached from each of the following bonds of the first issue, to-wit: bonds numbered 676, 677, 696, 697, [fol. 56] 698, 840, 1290, 1291, 1292, 1401, 1402, 1416, 1417, 1418, 1419, 1420. Total, \$1920.00.

1 coupon in the amount of \$15.00, 6% coupon, which matured July 1, 1933, and presented for payment July 1, 1933, detached from each of the following bonds of the first issue, to-wit: bonds numbered 306 and 308. Total, \$30.00.

[fol. 57]

EXHIBIT "B" TO RETURN

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND  
FOR THE COUNTY OF TULARE

No. 27007

MILO W. BEKINS and REED J. BEKINS, as Trustees Appointed  
by the Will of Martin Bekins, Deceased; Milo W. Bekins  
and Reed J. Bekins, as Trustees Appointed by the Will  
of Katherine Bekins, Deceased; James Irvine; J. R.  
Mason; James H. Jordan; C. A. Moss, and H. E. Curtis,  
Petitioners,

vs.

BOARD OF SUPERVISORS OF TULARE COUNTY, Respondent

PETITION FOR WRIT OF MANDATE

To the Honorable Superior Court Aforesaid:

The petitioners respectfully represent:

I

That Lindsay-Strathmore Irrigation District was duly organized on the 16th day of October, 1915, under and by virtue of the laws of the State of California, and ever since has been and now is an irrigation district organized and existing under and by virtue of the laws of the State of California, and is situated within the County of Tulare.

II

That said Lindsay-Strathmore Irrigation District duly issued, sold, and delivered its interest bearing bonds designated as First Issue, dated July 1, 1916, in the principal amount of \$1,316,000, and Second Issue dated October 1, 1918, in the principal amount of \$245,000.00.

III

That each of said bonds hereinabove alleged was so made, executed, sold, delivered and issued by Lindsay-Strath-

more Irrigation District, for the purpose of constructing or [fol. 58] purchasing necessary irrigation canals or works or acquiring necessary property and rights therefor, or for the purpose of acquiring waters, water rights, reservoirs, reservoir sites or other property necessary for the purposes of the Lindsay-Strathmore Irrigation District or to provide for drainage made necessary by irrigation provided for the Lindsay-Strathmore Irrigation District, or to provide for the construction, acquisition, operation, leasing or control of plants for the generation, distribution, sale or lease of electrical energy or a combination of such purposes.

#### IV

That said bonds were in the denomination of \$1000.00 and \$500.00 and each of them by its terms is payable to bearer and the same bear interest at the rate of 6% per annum, evidenced by interest coupons attached thereto, payable January 1 and July 1 of each year, and that on the 11th day of September, 1933, there were outstanding and unpaid on said bond issues \$1,438,000.00 principal, with certain accrued and unpaid interest thereon.

#### V

That the following amounts of principal of said bonds and interest upon said bonds respectively matured on the said bond issues the years as indicated;

Year	Bonds Mat.	Interest	Total
1933 .....	63,500.00	88,132.50	151,632.50
1934 .....	63,500.00	84,322.50	147,822.50
1935 .....	80,000.00	80,550.00	160,550.00
1936 .....	80,000.00	75,750.00	155,750.00
1937 .....	82,500.00	70,987.50	153,487.50

#### VI

That on the 11th day of September, 1933, the Board of Directors of the Lindsay-Strathmore Irrigation District adopted its resolution levying assessments, which said resolution [fol. 59] was in words and figures as set forth in Exhibit "A" hereunto annexed and made a part hereof by this reference.



## VII

That the assessment so levied was the sole source of revenue of said district during the year of said assessment, except water tolls in the approximate amount of \$150,00.00, and that the amount levied was insufficient, together with the water tolls, to meet the requirements of said district for maintenance and operation and bond interest and principal, and that no assessment was levied by said Board of Directors during the year 1933, except the assessment levied in accordance with the said resolution.

## VIII

That at the time of the levy of said assessment, the Lindsay-Strathmore Irrigation District was in default in payment upon its bonds and bond interest not less than 20% and it has remained in default ever since.

## IX

That likewise in the year 1934; and also in the year 1935; and also in the year 1936, the Board of Directors of said Lindsay-Strathmore Irrigation District levied assessments upon the lands of said district in like form and purport as that levied in 1933, and the said Board of Directors in its resolutions adopted in the years 1934, '35, and '36 set forth, as it did in 1933, that the said Board, by reason of the default, availed itself of the provisions of Section 11 of the District Securities Commission Act, and that the Board has estimated the amount that in its judgment it would be reasonable possible for the land in the district taken as a whole to pay, without exceeding a delinquency of 15%, and determined the said amount and levied its assessment in accordance therewith, and that the assessment levied in each of said years, together with the amount of all [fol. 60] other available sources of revenue applicable to payment of operation, maintenance, construction, and bond interest and principal, was insufficient to pay the amounts due and to become due during the ensuing year, and in particular the assessment levied by said Board of Directors in September 1936, together with the funds on hand and sources of revenue available for those purposes, was insufficient in amount to pay interest due or that would become due upon all of the outstanding bonds of the district

on the first day of the next ensuing January and the first day of the next ensuing July, together with the principal of all bonds of the district that had matured or that would mature before the close of the next ensuing calendar year, together with the amount necessary to pay in full all sums due or that would become due from the district before the close of the next ensuing calendar year on account of rentals, charges for land, water, water-works, or other property acquired by said district under lease or contract, together with the amount necessary to pay in full all sums due or that would become due from the district before the close of the next ensuing calendar year on account of the contracts entered into between the district for power or fuel used or to be used for the pumping of water for the irrigation of land within the district, together with an amount sufficient to pay in full the amount of all unpaid warrants the district issued in accordance with the California Irrigation District Act and the amount of any other contract or obligation of the district which had been reduced to judgment, together with an amount sufficient to provide for replacement or reconstruction, and such other amounts as were necessary for any of the purposes of the act; that in calculating and ascertaining the amount of the assessment levied in the year 1936, as aforesaid, the Board of Directors made no provisions for redemption of or interest upon its bonded indebtedness and totally failed [fol. 61] to make provisions for the payment thereof by assessment or otherwise.

## X

That Petitioners, Milo W. Bekins and Reed J. Bekins are trustees appointed by the will of Martin Bekins, deceased, and as such trustees are the owners of bonds of said issues in the amount of \$53,500.00, which by their terms matured in the years 1933 to 1937, inclusive, and are also the owners and holders of interest coupons detached from bonds of said issues, which according to their face matured in the years 1933 to 1937, inclusive, in the sum of \$13,635.00; that Milo W. Bekins and Reed J. Bekins are trustees appointed by the will of Katherine Bekins, deceased, and as such trustees are the owners and holders of bonds of said issues in the sum of \$10,000.00, which matured in the years 1933 to 1937, inclusive, and are also the owners and holders of

interest coupons detached from said bonds, which according to their face matured in the years 1933 to 1937, inclusive, in the amount of \$3,015.00.

That James Irvine is the owner and holder of bonds of said issues in the amount of \$14,000.00, which according to their terms matured in the years 1933 to 1937, inclusive, and is also the owner and holder of interest coupons detached from said bonds, which according to their face matured in the years 1933 to 1937, inclusive, in the amount of \$3,825.00.

That J. R. Mason is the owner and holder of bonds of said issues in the amount of \$3,500.00, which according to their terms matured in the years 1933 to 1937, inclusive, and is also the owner and holder of interest coupons detached from said bonds, which according to their face matured in the years 1933 to 1937, inclusive, in the amount of \$7,200.00.

That James H. Jordan is the owner and holder of bonds of said issues in the amount of \$9,500.00, which according to their terms matured in the years 1933 to 1937, inclusive, [fol. 62] and is also the owner and holder of interest coupons detached from said bonds, which according to their face matured in the years 1933 to 1937, inclusive, in the amount of \$2,383.00.

That C. A. Moss is the owner and holder of interest coupons detached from bonds of said issues, which according to their face matured in the years 1933 to 1937, inclusive, in the amount of \$1,440.00.

That H. E. Curtis is the owner and holder of interest coupons detached from bonds of said issues, which according to their face matured in the years 1933 to 1937, inclusive, in the amount of \$645.00.

## XI

That all of the said matured bonds and coupons owned and held by petitioners, as aforesaid, were presented to the treasurer of the Lindsay-Strathmore Irrigation District for payment and payment thereof demanded at the time of the maturity of said several bonds and coupons, but that payment thereof was refused and the same and each of them is wholly unpaid and none of the petitioners have been notified that funds are available for payment thereof or of any of said bonds or coupons.

## XII

That prior to the commencement of this action the said Lindsay-Strathmore Irrigation District entered into a contract with the Reconstruction Finance Corporation of the United States, an agency of the United States, by the terms of which the said Lindsay-Strathmore Irrigation District secured a loan from said Reconstruction Finance Corporation in the sum of \$860,000.00, in accordance with the provisions of Title 43, Sec. 403, U. S. C. A., which said loan was calculated to pay the bondholders of said district 59.978% of the principal amount of the bonds held by such bondholders; that the said sum was made available by the Reconstruction Finance Corporation for the purpose of [fol. 63] reducing and refinancing the bonded indebtedness of said Lindsay-Strathmore Irrigation District, and that after the levy of the assessment made in the year 1936, as aforesaid, and prior to August 1, 1937, bondholders of said Lindsay-Strathmore Irrigation District holding in excess of 85% of the bonded indebtedness of said district were paid out of the proceeds of said loan the said sum of 59.978% of the principal of the bonds severally owned by them, whereupon the said bondholders surrendered their bonds and interest coupons with claims thereon in accordance with the terms of the plan for the readjustment of the debts of the said Lindsay-Strathmore Irrigation District; that said plan provided for payment to such bondholders as would accept the payment of said sums out of the proceeds of the loan made by the Reconstruction Finance Corporation, as aforesaid, and for the issuance of refunding bonds by the said Lindsay-Strathmore Irrigation District bearing interest at 4% per annum, amortized over a period of 33 years with no principal payable during the first three years, the bonds to be issued and delivered to the Reconstruction Finance Corporation in the exact amount of the loan advanced by the Reconstruction Finance Corporation and accepted by the bondholders as aforesaid; that under the provisions of said plan the said bondholders waived all claim to payment out of the funds of said district as to the bonds surrendered by them and as to the coupons surrendered by them; that the bonds and coupons so surrendered by the depositing bondholders were delivered into the custody of the Reconstruction Finance Corporation, which holds them as evidence of the advancement on the loan by



the Reconstruction Finance Corporation until the delivery of the refunding bonds in accordance with the plan.

### XIII

That under the provisions of the contract between the Reconstruction Finance Corporation and the Lindsay-[fol. 64] Strathmore Irrigation District no sums are payable to the Reconstruction Finance Corporation on account of the principal or interest on the bonds transferred to them, as aforesaid, nor on account of their contract for the said loan, nor on account of interest or principal upon the refunding bonds issued under said plan prior to January 1, 1938, whereupon interest at 4% per annum from the date of disbursement of said loan will be payable.

### XIV

That the only matured bond principal and interest obligations of said district which are unpaid are those owned and held, as aforesaid, by the petitioners, and in this respect petitioners have no knowledge or information as to whether or not there are any other bondholders of the Lindsay-Strathmore Irrigation District who have not deposited their bonds and hold unpaid matured claims thereunder other than your petitioners, and basing their allegations thereon deny that there are any such bondholders.

### XV

The Board of Directors of Lindsay-Strathmore Irrigation District intend to levy an assessment in September 1937, in like form and manner as that heretofore levied in the years 1933 to 1936, and will provide therein for payment of the amounts of interest payable to the Reconstruction Finance Corporation upon its loan, but do not intend to levy an amount sufficient to pay the principal and interest due petitioners.

### XVI

That heretofore and during the month of August 1937, petitioners made demand upon the respondent, in accordance with the provisions of Section 39a, 39b, 39c, 39d of the California Irrigation District Act, to cause an assessment

roll to be prepared and to levy an assessment upon the lands of said district sufficient to pay the aforesaid matured bonds and interest of petitioners; that the said Board of [fol. 65] Supervisors refused and has neglected to cause such roll to be prepared or to levy such assessment or any assessment upon the lands of said Lindsay-Strathmore Irrigation District to pay the said claims.

## XVII

That your petitioners are the parties beneficially interested herein and will suffer irreparable injury unless the said Board of Supervisors be required to levy an assessment upon the lands of said district in accordance with the provisions of the California Irrigation District Act; that your petitioners have no plain, speedy, or adequate remedy in the ordinary course of law.

Wherefore, your petitioners pray judgment:

1. That a writ of mandate issue out of and under the seal of this court directed to the respondent, commanding that the respondent Board of Supervisors forthwith proceed to cause an assessment roll of the Lindsay-Strathmore Irrigation District to be prepared and to levy an assessment upon the lands of said district sufficient in amount to pay in full the claims of the petitioners amounting to \$90,500.00 of bonds and \$32,143.00 coupons of bonds, with interest, and that all other steps necessary or proper to be taken by said Board of Supervisors for the purpose of levying said assessment be taken.

2. For such other and further relief as to the Court may seem just, together with petitioners' costs.

W. Coburn Cook, Chas. L. Childers, Attorney for  
Petitioners.

[fol. 66] STATE OF CALIFORNIA,  
County of Kern, ss:

Reed J. Bekins, being duly sworn, says:

That he is one of the petitioners named in the foregoing petition; that he has read the same, knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated upon information

and belief, and as to those matters that he believe- them to be true.

Reed J. Bekins.

Subscribed and sworn to before me this 30th day of August, 1937. Geraldine Hall, Notary Public in and for the County of Kern, State of California. (Seal.)

[fol. 67]

EXHIBIT "A" TO PETITION

"Whereas, the assessor of the Lindsay-Strathmore Irrigation District did complete his assessment book for said district for the Assessment Year 1933, on August 1, 1933, and having prior thereto assessed all of the taxable real estate within the boundaries of said district, and having on said day delivered the said assessment book to the secretary of the Board of Directors of said district, and the secretary aforesaid having immediately thereafter given notice of the time when said board, acting as a Board of Equalization, would meet to equalize said assessment, by publication in a newspaper of general circulation, to-wit: the Lindsay Gazette, a newspaper published and printed in the County of Tulare, State of California, in which county the said district is wholly situated, which time was not less than twenty (20) nor more than thirty (30) days from the date of the first publication of said notice; and in the meantime the said assessment book remained in the office of the said secretary for the inspection of all persons interested, and the Board of Directors of said Lindsay-Strathmore Irrigation District, acting as a Board of Equalization, met and continued in session from time to time as long as was necessary, not exceeding ten days, exclusive of Sundays, to hear and determine such objections to the valuations and assessments as might come before them.

And such equalization session having been held and completed, and the secretary of said Board having been present at such session and having noted all changes made in the valuation of property, and otherwise, as provided by law, and having after the close of said session extended into columns and added the total values, as finally equalized by said Board, and said assessment book, so equalized and finally footed now being before this Board, and this Board finding all of the facts to be as aforesaid, and

Whereas, the Lindsay-Strathmore Irrigation District duly levied its annual assessment for the year 1932, as required by the California Irrigation District Act, and

Whereas, the money derived from said assessment, together with all other revenue allocated to payment of bond interest and principal, was insufficient to meet the said bond interest and principal when due and said district has defaulted on its bond principal and interest to an extent in excess of 20% of the amount due, and

Whereas, by reason of such default said district is subject to and has, by resolution of its Board of Directors adopted at a regular meeting of said Board held in its office on the 7th day of July, 1933, availed itself of the provisions of that certain act of the Legislature of the State of California, entitled "An act to amend the California Districts Securities Commission Act by repealing Section 11 thereof and adding a new section 11 thereto etc." in effect April 11th, 1933, and

Whereas, the secretary and manager of the district have compiled and prepared a report upon the productivity of the lands in the district, crops growing and to be grown during the year, market conditions as well as they can be forecast, the cost of producing and marketing crops, and obligations of the land respecting taxes and public liens and other data and matter to enable this Board of Directors to estimate the total amount, as in its judgment, it will be reasonably possible for the lands in said district, taken as a whole to pay, without exceeding a delinquency of 15%, to be used by said board as a basis upon which the annual assessment of the district for the year 1933 may be computed and levied under the provisions of said Section 11, and

Whereas, the said Board of Directors, after a careful study of all of the facts submitted as above finds that in its judgment it will be reasonably possible for the lands in said district, taken as a whole, to pay only the sum of \$64,103.34 without exceeding a delinquency of fifteen per cent, and it appearing to this board, and this board so finds, that it is necessary to raise the said sum of \$64,103.34 for the assessment year 1933,

Now Therefore, it is hereby ordered that for the purpose of raising an amount sufficient to total said sum of \$64,103.34, that an assessment be levied upon all of the taxable real estate within said district, and that the rate of assess-



ment be and the same is hereby fixed in the sum of \$4.26 on each one hundred dollars of the valuation of said real estate, as such valuation appears upon the said assessment roll, and it is further ordered that the same be and is hereby levied as and for the amounts assessed, as above set out."

[fol. 69]

EXHIBIT "C" TO RETURN

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND  
FOR THE COUNTY OF TULARE

No. 27007

MIL0 W. BEKINS and REED J. BEKINS, as Trustees Appointed by the Will of Martin Bekins, Deceased; Milo W. Bekins and Reed J. Bekins, as Trustees Appointed by the Will of Katherine Bekins, Deceased; James Irvine, J. R. Mason, James H. Jordan, C. A. Moss, and H. E. Curtis, Petitioners,

VS.

BOARD OF SUPERVISORS OF TULARE COUNTY, Respondent

ALTERNATIVE WRIT OF MANDATE

The People of the State of California Send Greetings to the Board of Supervisors of Tulare County:

Whereas, it appears by the verified petition of Milo W. Bekins and Reed J. Bekins, as trustees appointed by the Will of Martin Bekins, deceased; Milo W. Bekins and Reed J. Bekins, as trustees appointed by the Will of Katherine Bekins, deceased; James Irvine; J. R. Mason; James H. Jordan; C. A. Moss, and H. E. Curtis that they own and hold matured bonds of the Lindsay-Strathmore Irrigation District in the sum of \$90,500.00, and matured interest coupons in the amount of \$32,143.00, which matured during the years 1933 to 1937, inclusive, none of which have been paid, and that the Board of Directors of Lindsay-Strathmore Irrigation District have failed to levy an assessment upon the lands within the Lindsay-Strathmore Irrigation District during the years 1933, 1934, 1935, and 1936 to raise an amount sufficient to pay the said bonds and coupons of the petitioners, and that, you, the said Board of Supervisors of Tulare County, have refused to cause an assessment roll to be prepared and to levy an assessment

[fol. 70] upon the lands within the Lindsay-Strathmore Irrigation District, as provided by Sections 39 and 39c of the California Irrigation District Act, for the purpose of raising funds to pay the said claims of the petitioners,

Now, Therefore, We Command You that immediately upon the receipt of this writ, you, the said Board of Supervisors of Tulare County, cause to be prepared an assessment roll of said Lindsay-Strathmore Irrigation District and forthwith proceed to levy an assessment upon the lands within the Lindsay-Strathmore Irrigation District in an amount sufficient to raise the amount due petitioners for bond principal in the sum of \$90,500.00 and also sufficient to raise the amount due petitioners for bond interest in the amount of \$32,143.00, or that in default, you, the said Board of Supervisors, show cause before this court why you have not done so, in the courtroom of this court in Department 1 thereof, on the 13th day of September, 1937, at the hour of 10 a. m.

Witness, the Honorable Frank Lamberson, Judge of the Superior Court of the State of California, in and for the County of Tulare.

Dated August 31st, 1937.

Attest:

Gladys Stewart, Clerk, by Troy Owen, Deputy Clerk.  
(Seal.)

[fol. 71] EXHIBIT "D" TO RETURN

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND  
FOR THE COUNTY OF TULARE

No. —. Dept. —.

MILO W. BEKINS and REED J. BEKINS, as Trustees Appointed by the Will of Martin Bekins, Deceased; Milo W. Bekins and Reed J. Bekins, as Trustees Appointed by the Will of Katherine Bekins, Deceased; James Irvine; J. R. Mason; James H. Jordan; C. A. Moss, and H. E. Curtis, Petitioners,

vs.

BOARD OF SUPERVISORS OF TULARE COUNTY, Respondent  
DEMURRER

Now comes the Board of Supervisors of the County of Tulare, State of California, the respondent above named,

5

and demurs to the petition on file in the above entitled matter of the ground that:

I

Said petition does not state facts sufficient to constitute a cause of action against said respondent or to warrant the issuance of a Writ of Mandate as prayed for in said petition.

Walter C. Haight, District Attorney of the County of Tulare, by Leroy McCormick, Assistant District Attorney; Leroy McCormick, John R. Lock, Jr., Attorneys for Respondent.

Memorandum of Points and Authorities

C. C. P., Sec. 444.

Sec. 11, District Securities Commission Act, Statutes 1931, page 2263; Statutes 1933, page 355.

[fol. 72]

EXHIBIT "E" TO RETURN

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND  
FOR THE COUNTY OF TULARE

No. 27007

MILO W. BEKINS and REED J. BEKINS, as Trustees Appointed by the Will of Martin Bekins, Deceased; Milo W. Bekins, and Reed J. Bekins, as Trustees Appointed by the Will of Katherine Bekins, Deceased; James Irvine; J. R. Mason; James H. Jordan; C. A. Moss, and H. E. Curtis, Petitioners,

vs.

BOARD OF SUPERVISORS OF TULARE COUNTY and LINDSAY-STRATHMORE IRRIGATION DISTRICT, an Irrigation District, Respondents

SPECIAL RETURN OF THE LINDSAY-STRATHMORE IRRIGATION  
DISTRICT

Lindsay-Strathmore Irrigation District, an irrigation district organized and existing as such a district under and by

virtue of the laws of the State of California and by order of Court made a party respondent herein, hereby, but without in anywise or manner waiving or abandoning its demurrer heretofore filed herein, files this, its special return to the Alternative Writ of Mandate issued in this action or proceeding on the 31st day of August 1937 and for its return alleges:

## I

That on the 21st day of September, 1937, the above named district did commence, in the District Court of the United States for the Southern District of California, Northern Division, a proceeding in bankruptcy entitled "In the matter of the Petition of Lindsay-Strathmore Irrigation District, an insolvent taxing agency, for confirmation of a Plan for the Composition and Readjustment of its Debts" and numbered 4745 on the records and files of that Court and that proceeding is now pending in that Court and was commenced under and pursuant to Chapter X of the Bankruptcy Act, being the act of the Congress of the United States entitled an act 'To amend an Act entitled "An Act to establish a uniform system of bankruptcy throughout the [fol. 73] United States", approved July 1, 1898, and acts amendatory thereof and supplementary thereto, approved August 16, 1937' (Public No. 302—75 Congress) by causing to be filed in that Court its petition for the confirmation of a plan for the composition and readjustment of its bonded indebtedness. The plan and the proceeding seeking the judgment of that Court confirming the same, directly affect all of the outstanding bonded indebtedness of this respondent district, including the very same and identical bonds alleged to be held by the petitioners herein and upon which they, and each of them, base their several and respective claims, in this, that the decree of that Court confirming the plan will, upon the consummation thereof, release and discharge this respondent from all liability upon all of the indebtedness on which the petitioners herein base their several and respective claims.

## II

On September 21, 1937, an order was made in that proceeding and by the above mentioned District Court of the United States, wherein it is now pending, approving the petition of this respondent as being properly filed therein



in good faith and in compliance with the provisions of the above mentioned Chapter X of the Bankruptcy Act.

### III

Thereafter and on September 22, 1937 there was also issued out of that Court and in that proceeding an order directed to the creditors of this respondent district, including, among others, all of the petitioners herein, ordering them and all of them to appear in that Court on October 11, 1937, and show cause, if any they have, why an order should not be made by that Court enjoining and staying, pending the determination of the above mentioned matter or proceeding now pending therein, the commencement or continuation of suits, actions or proceedings against the district [fol. 74] on account of the securities affected by its plan, including the very same and identical bonds upon which the petitioners herein base their several and respective claims, or to enforce the levy of taxes or assessments for the payment of obligations under such securities. That order also provide that, pending the hearing of any cause which might be shown, that all of the creditors of the district, including the petitioners herein, and their agents and attorneys, are restrained and enjoined from commencing or continuing any suit, action or proceeding, including this proceeding, against the district, on account of any of the securities affected by the plan, including the bonds upon which the petitioners herein base their several and respective claims, or to enforce any lien or to enforce the levy of taxes or assessments under such securities.

Wherefore this respondent prays that the order of this Court be made and entered herein suspending any and all further acts or proceedings in this action or proceeding until the termination of the above mentioned proceeding which was commenced and brought by this respondent under and pursuant to Chapter X of the Bankruptcy Act and which is now pending in the District Court of the United States for the Southern District of California, Northern Division.

Jas. R. McBride, Attorney for Respondent.

STATE OF CALIFORNIA,  
County of Tulare, ss:

Ernest L. Daniells, being first duly sworn, deposes and says: That he is the president of the Board of Directors of

Lindsay-Strathmore Irrigation District, the respondent above and in the foregoing Special Return named and that he makes this affidavit for and on the behalf of the irrigation district. He has read the foregoing Special Return and knows the contents thereof and the same is true of his own knowledge except as to those matters therein stated to be upon information and belief and as to those matters he believes it to be true.

Subscribed and sworn to before me this 25th day of September 1937. ———, Notary Public in and for said County and State.

[fol. 75]                      EXHIBIT "F" TO RETURN

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN  
AND FOR THE COUNTY OF TULARE

No. 27007

MILO W. BEKINS and REED J. BEKINS, as Trustees Appointed  
by the Will of Martin Bekins, Deceased; Milo W. Bekins  
and Reed J. Bekins, as Trustees Appointed by the Will of  
Katherine Bekins, Deceased; James Irvine; J. R. Mason;  
James H. Jordan; C. A. Moss, and H. E. Curtis, Petition-  
ers,

vs.

BOARD OF SUPERVISORS OF TULARE COUNTY and LINDSAY-  
STRATHMORE IRRIGATION DISTRICT, an Irrigation District,  
Respondents

#### ORDER SUSPENDING PROCEEDINGS

On September 25th, 1937, the Special Return of the Lindsay-Strathmore Irrigation District, this day filed herein, came on regularly to be heard and the petitioners being represented by W. Coburn Cook, Esq., their attorney, and the above named irrigation district, by Jas. R. McBride, Esq., its attorney, evidence both oral and documentary was offered and received and it appearing therefrom that a bankruptcy proceeding has been commenced by the irrigation district in the District Court of the United States for the Southern District of California, Northern Division, wherein the same is now pending and which is entitled "In the matter of the Petition of the Lindsay-Strathmore Irrigation District,"

gation District, an insolvent taxing agency, for the confirmation of a Plan for the Composition and readjustment of its Debts" and numbered 4745 on the records and files of this Court, and it further appearing that such proceeding directly affects all of the outstanding bonded indebtedness of the district, including the bonds upon which the petitioners herein base their several and respective claims, in that the decree of that court in that bankruptcy proceeding confirming the plan will on the consummation thereof discharge [fol. 76] the irrigation district from all liability on all of its outstanding bonded indebtedness, and it further appearing that all of the allegations in the special return contained are true, and good cause appearing therefor, it is hereby and on the motion of Jas. R. McBride, Esq., the attorney for the district,

Ordered: That, until the termination of the proceeding now pending in the District Court of the United States for the Southern District of California, Northern Division, entitled "In the matter of the Petition of Lindsay-Strathmore Irrigation District, an insolvent taxing agency, for the confirmation of a plan for the Composition and readjustment of its Debts," and numbered 4745 on the records and files of that Court, any and all further acts or proceedings herein be and they are hereby suspended and no further acts or proceedings shall be done, had or taken, and this proceeding shall remain in abeyance and in the same status as it now is, until that time.

Done in open court this 25th day of September, 1937.

— — —, Judge of the Superior Court.

[File endorsement omitted.]

[fol. 77] IN UNITED STATES DISTRICT COURT

No. 4575

[Title omitted]

RETURN OF JAMES H. JORDAN SHOWING CAUSE WHY AN INJUNCTION SHOULD NOT ISSUE AND WHY AN INTERLOCUTORY DECREE MAKING PLAN TEMPORARILY OPERATIVE SHOULD NOT BE ENTERED—Filed October 11, 1937

Comes now James H. Jordan and joins in the return of Milo W. Belins, et al., to the order to show cause issued

herein and adopts said return as his own, together with the points and authorities, and states further that he is also a creditor of the Lindsay-Strathmore Irrigation District; that he owns bonds of said irrigation district amounting to the sum of \$13,500.00, as described in the petition herein, and that he has an action pending in the Superior Court of Tulare County entitled "James H. Jordan, Plaintiff, vs. Lindsay-Strathmore Irrigation District, Defendant," No. 26668, in similar form to that described in the return of said Milo W. Bekins, et al., and that he also is a party to the cause of action pending entitled "Milo W. Bekins, et al., Plaintiffs, vs. Board of Supervisors of Tulare County, Defendants," No. 27007.

Wherefore, said James H. Jordan joins in the prayer and requests this Honorable Court to grant the prayer of the creditors Milo W. Bekins, et al., herein on their behalf and on his own.

W. Coburn Cook, Attorney for James H. Jordan.

Service and receipt of copy of the foregoing Return admitted this 11th day of October, 1937.

Mitchell, Silberberg, Roth & Knupp, by Guy Knupp,  
James R. McBride, Attorneys for Lindsay-Strathmore Irrigation District.

[File endorsement omitted.]

[fol. 78] IN UNITED STATES DISTRICT COURT

No. 4575

[Title omitted]

PROOF OF CLAIM—Filed October 11, 1937

STATE OF CALIFORNIA,

City and County of San Francisco, ss:

James Irvine, being first duly sworn, deposes and says:  
That he is a creditor of Lindsay-Strathmore Irrigation District, the petitioner herein, and that he is the owner and



holder of the following described bonds of said irrigation district, to-wit:

Bonds numbered 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 61, 62, 63, 64, 65, 66, 67, 202, 203, 266, 270, 271, in the total principal amount of \$18,500.00,

and that of said bonds some have matured to-wit: bonds in the sum of \$14,000.00, which said bonds became due and were presented to the Treasurer of the Lindsay-Strathmore Irrigation District for payment, as follows:

Bond No.	Date Due	Date Presented
44 .....	Oct. 1, 1935	Oct. 7, 1935.
45 .....	"	"
46 .....	"	"
47 .....	"	"
48 .....	"	"
49 .....	"	"
50 .....	"	"
51 .....	"	"
52 .....	"	"
53 .....	"	"
54 .....	"	"
55 .....	"	"
56 .....	"	"
57 .....	"	"
61 .....	Oct. 1, 1936	Jan. 9, 1937.
62 .....	"	"
63 .....	"	"
64 .....	"	"
65 .....	"	"
66 .....	"	"
67 .....	"	"

[fol. 79] and payment demanded, and that the same are wholly unpaid and that the said matured bonds bear interest at the rate of 7% from date of maturity, and that said creditor has not been notified that funds are available for payment thereof; that each of said bonds bear interest at the rate of 6% per annum, evidenced by interest coupons payable on January 1st and July 1st of each year; that said James Irvine is the owner of all of the coupons attached to said bonds, of which coupons in the amount of \$3,825.00

have matured and were presented to the treasurer for payment, together with interest thereon at the rate of 7% per annum from date of presentation to date of payment; that affiant by this proof of claim does not submit himself to the jurisdiction of this court except for the special purpose of objecting to the jurisdiction of this court.

James Irvine.

Subscribed and sworn to before me this 8th day of October, 1937. W. W. Healey, Notary Public in and for the City and County of San Francisco, State of California. My Commission expires August 29, 1941. (Seal.)

[File endorsement omitted.]

[fol. 80] IN UNITED STATES DISTRICT COURT

No. 4575

[Title omitted]

AFFIDAVIT OF MAILING—Filed October 4, 1937

STATE OF CALIFORNIA,

County of Los Angeles, ss:

Lillian Goodman, being duly sworn, deposes and says:

That she is, and at all times herein mentioned was, a citizen of the United States, residing in the City of Los Angeles, State of California, where the mailing herein referred to took place; that she is over the age of eighteen years and not a party to the within entitled cause or interested in the event thereof; that on the 25th day of September, 1937, affiant enclosed in envelopes copies of the attached Notice to Creditors, dated September 22nd, 1937, sealed the same and addressed them to the various creditors of said agency as shown by the books of said agency, and on said day deposited the said envelopes so addressed, with the postage thereon fully prepaid, in the United States Mail in the City of Los Angeles; that attached hereto

is a list of said creditors to whom said Notice to Creditors was mailed.

Lillian Goodman.

Subscribed and sworn to before me this 25th day of September, 1937. Lynne V. Buck, Notary Public in and for said County and State. (Seal.)

lb.

9/25/37.

[File endorsement omitted.]

(Here follows one photolithograph, side folio 81)



**Reconstruction Finance Corporation  
Drainage, Levee and Irrigation Division  
Hill Building  
Washington, D.C.**

**Wm. J. Burns, Trustee,  
32 Central Avenue  
Phoenix, Arizona**

**J. R. Mason  
1920 Lake St.  
San Francisco, California**

**Milo W. Bekins  
c/o Bekins Van & Storage Co.  
190 Otis St.  
San Francisco, California**

**Reed J. Bekins  
c/o Bekins Van & Storage Co.,  
190 Otis St.  
San Francisco, California**

**Wells Fargo Bank & Union Trust Co.  
Market at Montgomery  
San Francisco, Calif.**

**David F. Selby  
373 - 13th St.  
Oakland, Calif.**

**Walter J. Selby  
1161 Greenwich St.  
San Francisco, Calif.**

**A. Heber Winder  
Trust for Eva A. Parrington Trust  
204 Loring Block,  
Riverside, Calif.**

**James H. Jordan  
200 Loring Block,  
Riverside, Calif.**

**James Irvine  
c/o Crocker First National Bank of San F  
San Francisco, Calif.**

**Lina J. French, Testtr.  
c/o Security First National Bank  
6th and Spring Sts.,  
Los Angeles, Calif.**

**C. A. Moss  
532 N. Highland Ave.  
Los Angeles, Calif.**

**Lynn Atkinson  
c/o Carl and Murphy  
Attorneys at Law  
514 Pacific Mutual Bldg.  
Los Angeles, Calif.**

**NOTICE TO CREDITORS**

To the Creditors of Lindsay-Strathmore Irrigation District:  
Notice is hereby given, that on the 21st day of September, 1937, the verified petition of Lindsay-Strathmore Irrigation District was duly filed in the office of the Clerk of the District Court of the United States in and for the Southern District of California, stating among other things that the District is insolvent and unable to meet its debts as they mature and that it desires to effect a composition and plan of debt readjustment whereby its bonded and other outstanding indebtedness will be reduced and re-financed pursuant to the provisions of Sections 51, 52, and 53 of Chapter 10 of the National Bankruptcy Law as amended, and praying that the court take such other action under the Act mentioned as is necessary to fully effect such debt composition and readjustment. That the petition of said Lindsay-Strathmore Irrigation District and the proceedings for composition and readjustment of its debts as set forth therein have been approved by the court as properly filed under said Chapter 10 of said National Bankruptcy Law as Amended, and is now pending therein; that by order of the court duly entered in said proceedings, Friday, the 1st day of December, 1937, at the hour of 10 o'clock A. M. of said day, and the Post Office Building, in the City of Fresno, State of California, have been fixed as the time and place where, and at which said time and place, a hearing will be held for the purpose of considering the plan of composition and debt readjustment as set forth in said petition, as well as any change or modifications thereof which may be proposed or decreed to be necessary or proper and for the further purpose of hearing any creditor of the District upon any controvertible matter in connection with the proposed composition and plan of debt readjustment, and the advisability of entering an order confirming the same.

The plan of debt readjustment materially affects the holders of all of the outstanding bonded indebtedness of the District and of any claims for interest appertaining thereto as it will, if put into effect, require the holders of such indebtedness to surrender the same and receive in exchange therefor the amount in cash provided for in the plan, that is to say, a sum equal to the sum of \$4,59978 for each dollar of the principal amount of each such bond, in full payment, discharge and satisfaction of all amounts of principal and interest payable on such bond under the terms thereof or by reason of the presentation of such bond or any appertenant coupon as provided by section 53 of the "California Irrigation District Act"; provided that if any coupon or coupons, which matured on or prior to January 1, 1934, be not attached to or surrendered with the bond to which it is appertenant, then the amount to be paid on such bond shall be reduced in an amount equal to \$4.58 Cents for each Dollar of the face amount of such missing coupon or coupons and if any coupon or coupons, which matured subsequent to January 1, 1934, be not attached to or surrendered with the bond to which it is appertenant the amount to be paid on such bond shall be reduced by the face amount of such missing coupon or coupons.

Any creditor of petitioner affected by the plan may file an answer to the petition controverting any of the material allegations therein and setting up any objections that he may have to the plan of composition, at any time at least ten (10) days before the date fixed for said hearing. All creditors may be heard on the acceptance or rejection of the plan for composition and debt readjustment at the hearing, and are required to make proof and evidence of their claims by filing a verified statement thereof with the Clerk of this court on or before the above mentioned date fixed for hearing.

Creditors of the District are hereby referred to the petition on file in the above entitled proceeding and to the exhibits attached thereto and the order of the Court for details and particulars of the proposed plan of composition and debt readjustment, and of the proceedings taken and to be taken herein.

Dated: Sept. 23, 1937.

**R. A. ZIMMERMAN**  
Clerk of the United States District Court  
Jail R. McRRIDE, National Bank Bldg., Los Angeles, Calif.

**MITCHELL SILVERBERG, BOTH & KNAPP**, Attorneys, 608 Roosevelt Bldg., Los Angeles, Cal.  
First publication September 23, 1937.  
(52951 Thors)

Reprint L. A. Daily Journal MU. 684



[fol. 82] IN UNITED STATES DISTRICT COURT

No. 4575

[Title omitted]

AFFIDAVIT OF MAILING—Filed October 4, 1937

STATE OF CALIFORNIA,

County of Los Angeles, ss:

Lillian Goodman, being duly sworn, deposes and says: That she is, and at all times herein mentioned was, a citizen of the United States, residing in the City of Los Angeles, State of California, where the mailing herein referred to took place; that she is over the age of eighteen years and not a party to the within entitled cause or interested in the event thereof; that on the 25th day of September, 1937, affiant enclosed in envelopes copies of the attached Order to Show Cause Why Injunction Should Not Issue And Why Interlocutory Decree Making Plan Temporarily Operative Should Not Be Entered, dated September 22nd, 1937, sealed the same and addressed them to the various creditors of said agency, as shown by the books of said agency, and on said day deposited the said envelopes so addressed, with the postage thereon fully prepaid, in the United States Mail in the City of Los Angeles; that attached hereto is a list of said creditors to whom said Order to Show Cause was mailed.

Lillian Goodman.

Subscribed and sworn to before me this 25th day of September, 1937. Lynne V. Buck, Notary Public in and for said County and State. (Seal.)

[fol. 83] IN THE DISTRICT COURT OF THE UNITED STATES,  
SOUTHERN DISTRICT OF CALIFORNIA, NORTHERN DIVISION

No. 4575

In the Matter of the Petition of LINDSAY-STRATHMORE IRRIGATION DISTRICT, an Insolvent Taxing Agency, for Confirmation of a Plan for the Composition and Readjustment of its Debts

Order to Show Cause Why Injunction Should Not Issue and Why Interlocutory Decree Making Plan Temporarily Operative Should Not Be Entered

To the Creditors of the Lindsay-Strathmore Irrigation District, Petitioner in the Above Entitled Cause:

You and Each of You are Hereby Notified that the Lindsay-Strathmore Irrigation District has filed in the above entitled court and proceeding its duly verified petition alleging that it is insolvent and unable to pay its debts as they mature and that it desires to effect a plan for the composition and readjustment of its debts under the provisions of Chapter 10 of the National Bankruptcy Act as amended and that an order has been made and entered therein finding that said petition has been filed in good faith and approving said petition as properly filed and fixing a time and place for the hearing thereon, and good cause appearing to the court,

It is Hereby Ordered that you and each of you show cause, if any you have, upon Monday, the 11th day of October, 1937, at the court room of the above entitled court at the Post Office Building, in the city of Fresno, State of California, at the hour of 2:00 o'clock P. M. of said day, or as soon thereafter as counsel may be heard, why an order should not be made and entered herein enjoining and staying, pending the determination of said matter, the commencement or continuation of suits, actions or proceedings against the petitioner, or any officer or inhabitant thereof, on account of the securities affected by the plan as set forth in said [fol. 84] petition, or to enforce any lien or to enforce the levy of taxes or assessments for the payment of obligations under such securities; and to also show cause, if any you have, why an interlocutory decree should not be entered herein ordering that the plan shall be temporarily operative

with respect to all securities affected thereby and that the payment of principal or interest, or both, of or on account of such securities shall be temporarily postponed or extended or otherwise adjusted in the same manner and upon the same terms as if such plan had been finally confirmed and put into effect.

It is Further Ordered that notice of the issuance of this order to show cause and of the time and place fixed for hearing the same be given to the creditors of said petitioner by mailing a copy of this order to show cause, postage prepaid, to each creditor of the petitioner named in the petition, at the address of such creditor given in the petition, not less than ten days prior to the date fixed for the hearing of said order to show cause.

It is Further Ordered that pending the hearing of this order to show cause the creditors of said petitioner, and their agents or attorneys, and each of them, be and he is hereby enjoined and restrained from commencing or continuing any suit, action or proceeding against the petitioner or any officer or inhabitant thereof, on account of the securities affected by the said plan of composition and debt readjustment, or to enforce any lien or to enforce the levy of taxes or assessments for the payment of any obligation under such securities.

Dated September 22nd, 1937.

Leon R. Yankwich, District Judge.

gk:m—9/21/37.

[fol. 85] Reconstruction Finance Corporation, Drainage, Levee and Irrigation Division, Hill Building, Washington, D. C.

Wm. J. Burns, Trustee, 32 Central Avenue, Phoenix, Arizona.

J. R. Mason, 1920 Lake St., San Francisco, California.

Milo W. Bekins, c/o Bekins Van & Storage Co., 190 Otis St., San Francisco, California.

Reed J. Bekins, c/o Bekins Van & Storage Co., 190 Otis St., San Francisco, California.

Wells Fargo Bank & Union Trust Co., Market at Montgomery, San Francisco, Calif.

David F. Selby, 373 - 13th St., Oakland, Calif.

Walter J. Selby, 1161 Greenwich St., San Francisco, Calif.

A. Heber Winder, Trust for Eva A. Parrington Trust, 204 Loring Block, Riverside, Calif.

James H. Jordan, 200 Loring Block, Riverside, Calif.

James Irvine, c/o Crocker First National Bank of San Francisco, San Francisco, Calif.

Lina J. French, Testtr., c/o Security First National Bank, 6th and Spring Sts., Los Angeles, Calif.

C. A. Moss, 532 N. Highland Ave., Los Angeles, Calif.

Lynn Atkinson, c/o Call and Murphy, Attorneys at Law, 514 Pacific Mutual Bldg., Los Angeles, Calif.

[File endorsement omitted.]

(Here follow two photolithographs, side folios 86-87 and 88)





NO. 4575

NOTICE TO CREDITORS  
In the Creditors of Lindsay-Strathmore Irrigation District:

Notice is hereby given, that on the first day of September, 1937, the verified petition of Lindsay-Strathmore Irrigation District was duly filed in the office of the Clerk of the District Court of the United States in and for the Southern District of California, stating among other things that the District is insolvent and unable to meet its debts as they mature and that it desires to effect a composition and plan of debt readjustment whereby its bonded and other outstanding indebtedness will be reduced and re-financed pursuant to the provisions of Sections 81, 82, and 83 of Chapter 10 of the National Bankruptcy Law as amended, and praying that the court take such other action under the Act mentioned as is necessary to fully effect such debt composition and readjustment. That the petition of said Lindsay-Strathmore Irrigation District and the proceedings for composition and readjustment of its debts as set forth therein have been approved by the court as properly filed under said Chapter 10 of said National Bankruptcy Law as Amended, and is now pending therein; that by order of the court duly entered in said proceedings, Friday, the 3rd day of December, 1937, at the hour of 10 o'clock A. M. of said day, and the Post Office Building, in the City of Fresno, State of California have been fixed as the time and place where, and at which said time and place, a hearing will be held for the purpose of considering the plan of composition and debt readjustment as set forth in said petition, as well as any changes or modifications thereof which may be proposed or decreed to be necessary or proper and for the further purpose of hearing any controvertible matter in connection with the proposed composition and plan of debt readjustment, and the advisability of entering an order confirming the same.

The plan of debt readjustment materially affects the holders of all of the outstanding bonded indebtedness of the District and of any claims for interest appertaining thereto as it will, if put into effect, require the holders of such indebtedness to surrender the same and receive in exchange therefor the amount in cash provided for in the plan, that is to say, a sum equal to the sum of \$59978 of each dollar of the principal amount of each such bond, in full payment, discharge and satisfaction of all amounts of principal and interest payable on such bond under the terms thereof or by reason of the presentation of such bond or any apportionment coupon as provided by section 53 of the "California Irrigation District Act"; provided that if any coupon or coupons which matured on or prior to January 1, 1934, be not attached to or surrendered with the bond to which it is appurtenant, then the amount to be paid on such bond shall be reduced in an amount equal to 56.58 Cents for each Dollar of the face amount of such missing coupon or coupons and if any coupon or coupons, which matured subsequent to January 1, 1934, be not attached to or surrendered with the bond to which it is appurtenant the amount to be paid on such bond shall be reduced by the face amount of such missing coupon or coupons.

Any creditor of petitioner affected by the plan may file an answer to the petition controverting any of the material allegations therein and setting up any objection that he may have to the plan of composition, at any time at least ten (10) days before the date fixed for said hearing. All creditors may be heard on the acceptance or rejection of the plan for composition and debt readjustment at the hearing, and are required to make proof and evidence of their claims by filing a verified statement thereof with the Clerk of this court on or before the above mentioned date fixed for hearing.

Creditors of the District are hereby referred to the petition on file in the above entitled proceeding and to the exhibits attached thereto and the order of the Court for details and particulars of the proposed plan of composition and debt readjustment, and of the proceedings taken and to be taken herein.

Dated: Sept. 22, 1937.

R. S. ZIMMERMAN  
Clerk of the United States District Court.MITCHELL, SILBERBERG, ROTH & KNUFF, Attorneys, 603 Roosevelt Bldg., Los Angeles, Cal.  
First publication September 22, 1937.  
(3291 Thurs)

*Verified & filed*  
STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES  
G. ARTZ  
Sept. 15, 1937

G. ARTZ

of said County and State, being duly sworn, says:

That I am and at all times herein mentioned was a citizen of the United States, over eighteen years of age, and not a party nor interested in the above entitled matter; that I am the principal clerk of the printer, publisher and proprietor of THE LOS ANGELES DAILY JOURNAL, a newspaper printed and published daily (Sundays excepted), in the said Los Angeles County; that the

## NOTICE TO CREDITORS

In the above entitled matter, of which the annexed is a printed copy, was published in said newspaper

ONCE A WEEK FOR FOUR SUCCESSIVE WEEKS, AND ON THE FOLLOWING DAYS, TO-WIT: September 23, and 30th October 7, and 14th, All in 1937.

G. ARTZ.

Subscribed and sworn to before me, this

14th day of October 1937.

Wm. W. ROE

Notary Public in and for Los Angeles County,  
(SEAL State of California.)



[fol. 89] IN UNITED STATES DISTRICT COURT

No. 4575

[Title omitted]

CERTIFICATE OF JUDGE—Filed October 11, 1937

To the Honorable Homer S. Cummings, Attorney General:

The undersigned, Leon R. Yankwich, Judge of the United States District Court, Southern District, pursuant to the provision of Act No. 352, 75th Congress, entitled "An Act to provide for intervention by the United States, direct appeals to the Supreme Court of the United States, and regulation of the issuance of injunctions, in certain cases involving the constitutionality of Acts of Congress, and for other purposes", approved August 24, 1937, do hereby certify:

That on September 21, 1937, the Lindsay-Strathmore Irrigation District, an insolvent taxing agent, petitioner in the above proceeding, filed a petition for confirmation of plan for composition and readjustment of its debts under Public Act No. 302, 75th Congress, approved August 16, 1937, and entitled, "An Act to amend an Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States', approved July 1, 1898, and Acts amendatory thereof and supplementary thereto", before me as Judge of said Court.

Upon the filing of said petition, I approved the same as properly filed and ordered notice to creditors to be given of the hearing of said petition on December 3, 1937. On [fol. 90] October 2, 1937, certain owners of bonds of the Lindsay-Strathmore Irrigation District gave notice of motion to dismiss the petition.

Said motion draws in question the constitutionality of Public Act No. 301.

As neither the United States nor any officers thereof, nor any of its agents or employees, are a party to said proceeding, I hereby certify these facts in conformity with the provisions of the Act above named.

Authority is hereby granted to the United States to intervene and become a party for presentation of evidence and

argument upon the question of the constitutionality of such Act.

Done in open court -his 11th day of October, 1937.

Leon R. Yankwich, United States District Judge.

[fol. 91] [File endorsement omitted.]

[fol. 92] IN UNITED STATES DISTRICT COURT

No. 4575. Bkcy.

[Title omitted]

PETITION OF INTERVENTION—Filed November 8, 1937

To the Honorable the District Court of the United States  
for the Southern District of California, Northern Division:

The petitioner respectfully shows:

## I

That, on or about the 21st day of September, 1937, the Lindsay-Strathmore Irrigation District filed a petition in the above entitled court for confirmation of a plan of composition and readjustment of its debts under Chapter 657 of Public 302, 1st Session 75th Congress, adopted August 16, 1937, entitled "An act to amend an act entitled 'An act to establish a uniform system of bankruptcy throughout the United States', approved July 1, 1898, and acts amendatory thereof and supplemental thereto."

## II

That on or about the 11th day of October, 1937, Milo W. Bekins and Reed J. Bekins, as trustees for owners of bonds of the Lindsay-Strathmore Irrigation District filed a motion in the above entitled court to dismiss the petition filed by the Lindsay-Strathmore Irrigation District; that one of the grounds set forth in the motion to dismiss is that the Bankruptcy Act, adopted August 16, 1937, under which the said petition of Lindsay-Strathmore Irrigation District was filed, is unconstitutional.



[fol. 93]

## III

That under Public 352, Chapter 754, 1st Session 75th Congress, was enacted:

“That whenever the constitutionality of any Act of Congress affecting the public interest is drawn in question in any court of the United States in any suit or proceeding to which the United States or any agency thereof, or any officer or employee thereof, as such officer or employee, is not a party, the court having jurisdiction of the suit or proceeding shall certify such fact to the Attorney General. In any such case the court shall permit the United States to intervene and become a party for presentation of evidence (if evidence is otherwise receivable in such suit or proceeding) and argument upon the question of the constitutionality of such Act. In any such suit or proceeding the United States shall, subject to the applicable provisions of law have all the rights of a party and the liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the constitutionality of such Act.”

## IV

Petitioner refers to all the allegations contained in the petition filed by Lindsay-Strathmore Irrigation District in the above entitled matter and makes each and all of said allegations a part of its petition in intervention as if fully set out herein.

## V

That petitioner is ready and willing and hereby offers to contribute to the expenses of the within suit for court costs its just proportion thereof, to the extent necessary for proper presentation of facts and law relating to the constitutionality of the Bankruptcy Act attacked by respondent in the motion to dismiss.

[fol. 94] Wherefore, petitioner prays an order be made allowing petitioner to intervene; that motion to dismiss be

denied; and for such other relief as is meet and just in the premises.

Ben Harrison, United States Attorney; Leo V. Silverstein, Asst. United States Attorney; Henry A. Julicher, Attorney, Department of Justice, of Counsel.

LVS-gls.

[fol. 95] *Duly sworn to by Ben Harrison. Jurat omitted in printing.*

[fol. 96] [File endorsement omitted.]

---

[fol. 97] IN UNITED STATES DISTRICT COURT

No. 4575. Bkcy.

[Title omitted]

ORDER ALLOWING INTERVENTION—Filed November 8, 1937

Upon reading the verified petition to intervene of the United States of America, and good cause appearing therefor,

It is Hereby Ordered that permission to the United States of America to intervene in said action is hereby granted.

Dated: November 8, 1937.

Leon R. Yankwich, United States District Judge.

LVS-gls.

[fol. 98] [File endorsement omitted.]

---

[fol. 99] IN UNITED STATES DISTRICT COURT

Present: the Honorable Leon R. Yankwich, District Judge.

No. 4575. Bkcy.

[Title omitted]

MINUTES OF HEARING—November 8, 1937

This matter coming on for hearing on (1) return of order of September 22, 1937, to show cause why an order should

not issue staying and enjoining suits, actions or proceedings against the debtor, and (2) hearing on motion of Milo W. Bekins and Reed J. Bekins, trustees, et al. to dismiss petition; Guy Knupp and James R. McBride, Esq., appearing for the debtor; W. Coburn Cook, Esq., appearing for Milo W. Bekins, et al.; Mr. Julius, of the Department of Justice, and Ben Harrison, United States Attorney, appearing for the United States of America as Intervenor (petition and order allowing intervention having been filed this day);

Attorney Cook moves to strike petition and order allowing intervention of the United States of America, which motion is denied, with exception noted to debtor, and Attorney Cook presents return to Order to Show Cause dated September 22, 1937, and also presents motion of Milo W. Bekins, et al. to dismiss petition, and files points and authorities, whereupon,

Guy Knupp, Esq., argues in reply to motion to dismiss and files authorities; Ben Harrison, Esq., argues in opposition to motion to dismiss and files authorities; W. C. Cook, Esq., files certified copy of Judgment of Dismissal of case No. 4005-Bkcy. as part of return to order to show cause; J. R. McBride, Esq., argues further for the Debtor; W. C. Cook, Esq., argues further; and the above petition and motion are thereupon submitted for decision.

14/299.

[fol. 100] Exhibit 4575. Bkcy. Filed Nov. 8, 1937, at 7 min. past 1 o'clock P. M. R. S. Zimmerman, Clerk, by Louis J. Somers, Deputy.

IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA, NORTHERN DIVISION

No. 4005. In Bankruptcy.

In the Matter of LINDSAY-STRATHMORE IRRIGATION DISTRICT,  
An Insolvent Taxing District

#### JUDGMENT OF DISMISSAL

In this cause a Decree Confirming Plan of Readjustment, Authorizing and Directing Procedure for Consummation of said Plan and Enjoining Attempts to Enforce Claims For

or Under Outstanding Bonds, Except in Accordance with said Plan, having been rendered and entered by this court May 8, 1936, and an appeal having thereafter been taken by Milo W. Bekins and Reed J. Bekins, as trustees appointed by the will of Martin Bekins, deceased, Milo W. Bekins and Reed J. Bekins, as executors of the will of Katharine Bekins, deceased, J. R. Mason, James H. Jordan, James Irvine, A. Heber Winder, trustee for Eva A. Parrington Trust, and C. A. Moss, to the United States Circuit Court of Appeals, for the Ninth Circuit, and the said cause having been reversed by the United States Circuit Court of Appeals, for the Ninth Circuit, holding Sections 78, 79 and 80 of the Bankruptcy Act of 1898, as amended, unconstitutional, and the proceedings taken thereunder void, and a mandate of the said United States Circuit Court of Appeals, for the Ninth Circuit, having come down to this court reversing the judgment entered herein.

It is Ordered, Adjudged and Decreed that the Decree Confirming Plan of Readjustment, Authorizing and Directing Procedure for Consummation of said Plan and Enjoining Attempts to Enforce Claims For or Under Outstanding [fol. 101] Bonds, Except in Accordance with said Plan, entered herein as aforesaid, be and the same hereby is vacated, annulled, set aside and declared void and ineffective for any purpose, and the petition of the Lindsay-Strathmore Irrigation District herein for confirmation of plan of readjustment of debts is dismissed and all orders restraining the creditors of said district from asserting or prosecuting their claims against said Lindsay-Strathmore Irrigation District are vacated, and judgment is entered herein in favor of the appellants and respondents, Milo W. Bekins and Reed J. Bekins, as trustees appointed by the will of Martin Bekins, deceased, Milo W. Bekins and Reed J. Bekins, as executors of the will of Katharine Bekins, deceased, J. R. Mason, James H. Jordan, James Irvine, A. Heber Winder, trustee for Eva A. Parrington Trust, and C. A. Moss, for their costs in accordance with said mandate of the Circuit Court of Appeals in the amount of \$— and for their costs incurred in this court in the amount of \$79.46/100 against the petitioner and appellee, Lindsay-Strathmore Irrigation District.

Dated July 26, 1937.

Geo. Cosgrave, United States District Judge.



A True Copy. Attest, etc. R. S. Zimmerman, Clerk U. S. District Court, Southern District of California, by Francis E. Cross, Deputy. (Seal.)

(Endorsed:) Filed 4:50 P. M., Jul. 26, 1937. R. S. Zimmerman, Clerk, by Francis E. Cross, Deputy.

[fol. 102] IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF CALIFORNIA, NORTHERN DIVISION

No. 4575. Bkey.

In the Matter of the Petition of LINDSAY-STRATHMORE IRRIGATION DISTRICT, an Insolvent Taxing Agency, for Confirmation of a Plan for the Composition and Readjustment of Its Debts

Appearances:

For Petitioner: Messrs. Mitchell, Silberberg, Roth & Knupp, of Los Angeles, California, James R. McBride.

For Respondents: W. Coburn Cook, of Turlock, California.

For Intervenor: Ben Harrison, United States Attorney, Los Angeles, California; Henry A. Julicher, Attorney, Department of Justice, Washington, D. C.

OPINION—Filed November 13, 1937

[fol. 103] YANKWICH, District Judge:

Lindsay-Strathmore Irrigation District, which we shall call "the district", is an irrigation district, organized under the "California Irrigation District Act", approved March 31, 1897, and the Acts amending and supplementing it. It comprises approximately 15,260 acres of land located in Tulare County, California, and is organized for the purpose of constructing, improving, maintaining and operating improvement projects and works devoted chiefly to the improvement of lands within its boundaries for agricultural purposes. Alleging that it is a taxing agency and instrumentality within the meaning of Chapter X of the Bankruptcy Act, approved August 16, 1937, it filed on September 21, 1937, a "petition for confirmation of a plan for composi-

tion or re-adjustment of its debt". The insolvency arises by reason of its inability to meet its obligations as to two bond issues issued by it under the provisions of the California Irrigation District Act. Attached to the petition is a plan of composition and re-adjustment, accepted by the petitioner and creditors owning approximately 87 per cent in amount of the securities affected by the plan, who have consented to the filing of the petition. It is aimed to pay in cash to the holders of the bonds a sum equal to 59.978 cents for each dollar of the principal amount of each bond, in full payment, discharge and satisfaction of all amounts of principal and interest due on such bond. The payment is to be made out of a loan which the Reconstruction Finance [fol. 104] Corporation has authorized and agreed to make to the district. Upon the filing of the petition, I entered an order approving it as properly filed under Chapter X, and set December 3, 1937, as the time and place for the hearing on the petition. On September 30, 1937, Milo W. Bekins and Reed J. Bekins, as trustees appointed by the will of Martin Bekins, deceased, and of the will of Katherine Bekins, deceased, J. R. Mason, James Irvine, A. Heber Winder, trustee for Eva A. Parrington, trust, and C. A. Moss gave notice of motion to dismiss the petition, upon the ground, among others, that the Court was without jurisdiction of the subject matter of the proceeding and that Chapter X of the Bankruptcy Act,—Sections 81 to 84 inclusive,—is unconstitutional and void. The matter coming up for hearing on October 11, 1937, I certified to the Attorney General the fact that the constitutionality of the Act was drawn in question, under the provisions of the judiciary reform Act approved August 24, 1937, (Public No. 352, 75th Congress, Chapter 754), and allowed the Government to intervene and defend the Act's constitutionality.

Chapter X, Sections 81 to 84 of the Bankruptcy Act, under which the petition was filed, were intended to supplant Section 80 of the Act, which was stricken down by the decision of the Supreme Court in *Ashton v. Cameron County Water District* (1936) 298 U. S. 513.

The presumption in favor of constitutionality calls for a ruling in favor of the validity of an Act of the Congress and commands us to resolve all doubts in favor of validity unless the contrary is made to appear beyond a reasonable [fol. 105] doubt. In effect, this means that we must sustain

the new Act unless the decision in *Ashton v. Cameron County District*, supra, compels a different conclusion. This is especially true when we consider an Act passed to replace an Act invalidated by our highest court. (See: *Wright v. Vinton Branch* (1937) 300 U. S. 440). It is not necessary to enter into a detailed comparison of the two Acts. While the aim of the old Act was "re-adjustment" of debts of insolvent public agencies named in it, the new Act aims at "composition" of the debts of the agencies coming under it, insolvency existing. Both plans contemplate a voluntary petition containing a plan approved by a certain number of its creditors,—thirty to fifty-one per cent in the old Act, fifty-one per cent in the new Act, the preliminary approval by the court of the petition, due notice of hearing for final confirmation of the plan of reorganization by the Court, if approved by more than a majority of the creditors, the percentage varying in the old Act from fifty-one upward and being fixed at two-thirds in all cases in the new Act. The confirmation of the plan in both instances and the payment of the consideration, under both enactments, has the effect of discharging the debtor from all debts or liabilities covered by the plan. The new Act disowns, as did the old one, any intention to interfere with the exercise of State governmental authority. Subdivision (i) of Section 84 reads:

"(i) Nothing contained in this chapter shall be construed to limit or impair the power of any State to control, by legislation or otherwise, any municipality or any political sub-[fol. 106] division of or in such State in the exercise of its political or governmental powers, including expenditures thereof."

The agencies to which the old Act applied included:

"(a) Any municipality or other political subdivision of any State, including (but not hereby limiting the generality of the foregoing) any county, city, borough, village, parish, town, or township, unincorporated tax or special assessment district, and any school, drainage, irrigation, reclamation, levee, sewer, or paving, sanitary, port, improvement or other districts (hereinafter referred to as a 'taxing district')". (Bankruptcy Act, Section 89(a).)

The new statute is made to apply to

"(1) Drainage, drainage and levee, levee, levee and drainage, reclamation, water, *irrigation*, or other similar districts, commonly designated as agricultural improvement districts or local improvement districts organized or created for the purpose of constructing, improving, maintaining, and operating certain improvements or projects devoted chiefly to the improvement of lands therein for agricultural purposes; or (2) local improvement districts such as sewer, paving, sanitary, or other similar districts, organized or created for the purposes designated by their respective names; or (3) local improvement districts such [fol. 107] as road, highway, or other similar districts, organized or created for the purpose of grading, paving, or otherwise improving public streets, roads, or highways; or (4) public-school districts or public-school authorities organized or created for the purpose of constructing, maintaining, and operating public school or public-school facilities; or (5) local improvement districts such as port, navigation, or other similar districts, organized or created for the purpose of constructing, improving, maintaining, and operating ports and port facilities; or (6) any city, town, village, borough, township, or other municipality;" (Bankruptcy Act, Chapter X, Sec. 81).

The scope of both Acts is limited as to time,—the old Act expiring on January 1, 1940, the new Act on June 30, 1940. In the Report of the Committee on the Judiciary of the House of Representatives, on the Act, its aim is stated:

"The Committee on the Judiciary is not unmindful of the sweeping character of the holding of the Supreme Court above referred to, and believes that H. R. 5969 is not invalid or contrary to the reasoning of the majority opinion in the 5-to-4 decision. The act which was declared unconstitutional designated the instrumentalities included in its provisions as political subdivisions of the State, and the Supreme Court determined that it was beyond the power reposed in Congress by article I, section 8, clause 4, of the Federal Constitution, 'To establish . . . uniform laws on the subject of bankruptcies', to pass an act to interfere with the States in the control of their fiscal affairs.

"The bill here recommended for passage expressly avoids any restriction on the powers of the States or their



arms of government in the exercise of their sovereign rights and duties. No interference with the fiscal or governmental affairs of a political subdivision is permitted. The taxing agency itself is the only instrumentality which can seek the benefits of the proposed legislation. No involuntary proceedings are allowable and no control or jurisdiction over that property and those revenues of the petitioning agency necessary for essential governmental purposes is conferred by the bill.

"As the statute which was declared unconstitutional was held to be within the subject of bankruptcies and uniform in its application, a fortiori, the present bill is adequately related to the general subject of bankruptcies, and does not conflict with the fifth amendment of the Federal Constitution as to due process of law." (Report No. 517, 75th Congress, First Session.)

[fol. 109] It is evident that the Committee assumed that the old statute had been declared unconstitutional merely because the Congress had used the generic phrase "any municipality or other political subdivision of any state". The new Act seeks to overcome this infirmity by enumerating specifically certain tax instrumentalities without grouping them under a generic title.

But the old Act included specifically irrigation districts, as does the new. And the new Act includes specifically municipalities as did the old.

The new Act attempts to draw a distinction between taxing bodies which are true governmental subdivisions,—such as counties, cities, villages, boroughs, and those which are government agencies of limited scope or between what are strictly municipal corporations and public or quasi-municipal corporations, of more limited scope. The distinction is made often in public law, especially in dealing with the power to tax and liability for tort, between strictly governmental and proprietary functions. (See: *Helvering v. Powers* (1934) 293 U. S. 214; *Ohio v. Helvering* (1934) 292 U. S. 360; *Brush v. Commissioner* (1937) 300 U. S. 352; *Yolo v. Modesto Irrigation District* (1932) 216 C. 274; 13 P(2) 908).

But a governmental body, does not lose its character as such merely because it may engage in activities of a proprietary nature. If it is an agency of the state for the performance of certain functions, the fact that the func-

tions are limited does not alter its status. An agency of the state for the performance of governmental functions it still remains. Ultimately, the test is, Does it have the [fol. 110] attributes of sovereignty? Do its activities constitute a public as distinguished from a private enterprise? In carrying out its functions, does it exercise that great prerogative which belongs to sovereignty only,—the power to tax and assess property within its boundaries for the upkeep of its activities? If it does, then it is a state agency or instrumentality, although it does not fit into any of the old rubrics under which governmental agencies were classified in less complex days,—villages, towns, cities, boroughs, and the like.

As I read the decision in *Ashton v. Cameron County District* supra, it is grounded upon this proposition.

The gist of the majority opinion is contained in the statement:

“Like any sovereignty, a State may voluntarily consent to be sued; may permit actions against her political subdivisions to enforce their obligations. Such proceedings against these subdivisions have often been entertained in federal courts. But *nothing in this tends to support the view that the Federal Government, acting under the bankruptcy clause, may impose its will and impair state powers—pass laws inconsistent with the idea of sovereignty.*” (*Ashton v. Cameron etc* 297 U. S. 513, 531.) (Italics added.)

A dissenting opinion often helps clarify the import and meaning of the majority opinion.

The minority opinion does not seek to draw any distinction between public or quasi-municipal bodies and true state subdivisions. As the court was not dealing with a municipality, but with a water and irrigation district, it is quite certain that the minority represented by the Chief Justice, Mr. Justice Brandeis, Mr. Justice Stone, and Mr. Justice Cardozo, who wrote the opinion, would have based their dissent upon the proposition that, granted the principles of the majority opinion, the water district, because of its limited powers, was not a political subdivision of the state. They did not do this. Instead, they asserted boldly that, while immunity from federal bankruptcy acts would attach to the state, it should not attach to local governmental units. Mr. Justice Cardozo says:

"There is room at least for argument that within the meaning of the Constitution the bankruptcy concept does not embrace the states themselves. In the public law of the United States, a state is a sovereign or at least a quasi-sovereign. Not so, *a local governmental unit, though the state may have invested it with governmental power*. Such a governmental unit may be brought into court against its will without violating the Eleventh Amendment. *Lincoln County v. Luning*, 133 U. S. 529; *Hopkins v. Clemson College*, 221 U. S. 636, 654. It may be subjected to mandamus or to equitable remedies. See, e. g. *Norris v. Montezuma Valley Irrigation District*, 248 Fed. 369, 372; *Tyler County v. Town*, 23 F. (2d) 371, 373; '*Neither public corporations nor political subdivisions are clothed with that immunity [fol. 112] from suit which belongs to the State alone by virtue of its sovereignty*'. *Hopkins v. Clemson College supra*," (*Ashton v. Cameron Co. etc. supra*, at 542). (*Italics added.*)

It is evident to me that the decision was not grounded upon the fact that the power of the Texas Legislature to establish water districts was derived from the general constitutional provision permitting the creation of political subdivisions of the state with power to sue and be sued, issue bonds, levy and collect taxes. The majority opinion intended to apply the limitation to all "taxing agencies" which exercise, under the authority of the state, the attributes of sovereignty. That this is the import of the decision is also shown by what the Court says about it in *Brush v. Commissioner*, 300 U. S. 352.

There the Court was considering the immunity of state governmental agencies from federal taxation. It held that a municipality in supplying water to its inhabitants engaged in a governmental function which brought immunity from federal income tax to an engineer employed in its Water Department. Speaking of the scope of *Ashton v. Cameron County District, supra*, the Court said:

"We recently have held that the bankruptcy statutes could not be extended to municipalities or other political subdivisions of a state. *Ashton v. Cameron County Water District*, 298 U. S. 513. *The respondent there was a water-improvement district organized by law to furnish water for [fol. 113] irrigation and domestic uses. We said (pp. 527-*

528) that respondent was a political subdivision of the state 'created for the local exercise of her sovereign powers' . . . Its fiscal affairs are those of the State, not subject to control or interference by the National Government, unless the right so to do is definitely accorded by the Federal Constitution.' In support of that holding, former decisions of this court with respect to the immunity of states and municipalities from federal taxation were relied upon as apposite. *The question whether the district exercised governmental or merely corporate functions was distinctly in issue.* The petition in bankruptcy alleged that the district was created with power to perform 'the proprietary and/or corporate function of furnishing water for irrigation and domestic uses' . . . The district judge held that the district was created for the local exercise of state sovereign powers; that it was exercising 'a governmental function'; that its property was public property; that it was not carrying on private business, but public business. That court, having denied the petition for want of jurisdiction, the district submitted a motion for a new trial in which it assigned, among other things, that the court erred in holding that petitioner was created for the purpose of performing functions, 'for the reason that the Courts of Texas, as well as the other Courts of the Nation, have uniformly held that the furnishing of water for irrigation was purely a proprietary function' . . . Substantially the same thing was repeated in other assignments of error. In the petition for rehearing in this court, the district challenged our determination that respondent was a political subdivision of the state 'created for the local exercise of her sovereign powers,' and asserted to the contrary that the facts would demonstrate that 'respondent is a corporation organized for essentially proprietary purposes.' It is not open to dispute that the statements quoted from our opinion in the Ashton case were made after due consideration, and the case itself decided and the rehearing denied in the light of the issue thus definitely presented. Compare *Bingham v. United States*, 296 U. S. 211, 218-219" (*Brush v. Commissioner*, 300 U. S. 352, 368-369). (Italics added.)

(And see: *Southern Sierras Power Company v. Imperial Irrigation District* (1937) 87 Fed. (2) 355.)

It is clear that the Court did not draw any line between governmental functions exercised by municipal corpora-



tions and governmental functions exercised by a public or [fol. 115] quasi-municipal corporations of more limited scope. The distinction it drew was between *governmental and corporate functions*. Corporate functions are functions which may be exercised by any private corporate body. They do not partake of a public nature.

Public functions, performed by an agency created by the State, whose officers are elected by voters having the qualifications of general electors of the State, and which exercise the powers of eminent domain and taxation,—the latter two among the two most important attributes of sovereignty and without which there could be no sovereignty,—are clearly governmental.

The irrigation district, which seeks relief under this enactment, is of this character. It is one of the instrumentalities of the State, which fall under the interdict of *Ashton v. Cameron*, etc., *supra*. Since the enactment in 1887, of the first Irrigation District Act in California, commonly known as the "Wright Act," California courts have had many occasions to determine the character of the districts created under it. So has the Supreme Court of the United States in upholding the Act. A California irrigation district, while not a political subdivision of the State, is a public corporation for municipal purposes and its officers are public officers of the state. (See: *Fallbrook Irrigation District v. Bradley* (1896), 164 U. S. 112; *In re Madera Irrig. Dist.* (1891), 92 C. 296, 28 P. 272; *Lindsay-Strathmore Irrig. Dist. v. Superior Court* (1920), 182 C. 315; 187 P. 1056; *Turlock Irrig. Dist. v. White* (1921), 186 C. 183; 198 P. 1060; *Crawford v. Imperial Irrig. Dist.* (1927), 200 C. 318; 253 P. 726; *Wood v. Imperial Irrig. Dist.* (1932), 216 C. 748; 17 P(2) 128; *Yolo v. Modesto Irrig. Dist.* (1932), 216 C. 748; 13 P(2) 908.) The case last cited contains one of the latest declarations of the Supreme Court of California on the subject. An irrigation district is there denominated "*a quasi-municipal corporation.*" In *Morrison v. Smith Brothers, Inc.* (1930) 211 C. 36, 40, 293 P. 53, irrigation districts are called "*state agencies performing a governmental function.*" In *Sutro Heights Land Co. v. Merced Irrig. Dist.* (1931) 211 C. 670, 690, 296 P. 1098, an irrigation district is referred to as "*an agency of the state, and the use to which water owned and controlled by it is put to a public use.*" The same court, in order to give to

irrigation districts immunity from liability for torts, considers them state agencies. (See: *Whiteman v. Anderson-Cottonwood Irrigation District* (1922) 60 C. A. 234, 212 P. 706; *Nissen v. Cordua Irrig. Dist.* (1928) 204 C. 545; 269 P. 171; *Morrison v. Smith Bros.* (1930) 211 C. 36; 293 P. 53; *Yolo v. Modesto Irrig. Dist.*, *supra*); (And on the general nature of instrumentalities of this character, as state agencies performing functions of government, see *Houck v. Little River Drainage District*, (1915) 239 U. S. 254).

Irrigation in California is "a public use" and the power of eminent domain may be exercised in behalf of it. (Constitution of California, Art. I, Sec. 14; California Code of Civil Procedure, Sec. 1241; Stats. 1911, p. 1407.)

The manner in which irrigation districts are created, the fact that they are called into being by an act of the Supervisors of the County in which the major part of the lands are located, upon petition of the property owners, that the officers of the district are elected by a vote not of property [fol. 117] owners, but of all electors within the district, the fact that the officers are subject to recall, as are all other officers of the State, the fact that before bonds are issued by the Board of Directors of an irrigation district for the purpose of constructing or acquiring works or other property, the plans for such works and the amount of the bonds to be issued, must be approved by the California Districts Securities Commission, consisting of the State Attorney General, the State Engineer, the Superintendent of Banks and two other members appointed by the Governor of the State, who must report on the feasibility of the project,—these, and other facts, serve to show the character of an irrigation district as a public instrumentality and agency of the State, subservient to it. (Stats. 1897, p. 254; Stats. 1931, p. 2263.)

Within their limited scope, irrigation districts exercise the powers of sovereignty. Like sovereigns, they enjoy immunity from liability for torts. They owe their existence to the State, and exercise state functions within their area, just as effectively as municipalities. Clearly, they are of the same type as the water and irrigation company which was before the Supreme Court in *Ashton v. Cameron County Water District*, *supra*, and of which the Court said:

"that the right to borrow money is essential to its operation. *Houck v. Little River Drainage District*, 239 U. S.

261-263; *Perry v. United States*, 294 U. S. 331. Its fiscal affairs are those of the State, not subject to control or interference by the National Government, unless the right so to do is definitely accorded by the Federal Constitution." (*Ashton v. Cameron*, etc. *supra* at 528.)

[fol. 118] I feel compelled by this decision to hold that the new enactment, Chapter X, of the Bankruptcy Act, insofar as it applies to irrigation districts of the type of the petitioner, is constitutionally vulnerable, as was the old.

As a student, exercising private judgment, I agree with the conclusion of the dissenters that immunity from interference through federal bankruptcy laws, even if applicable to states, should not be extended to state instrumentalities, whether they be municipal, quasi-municipal or public corporation. However, as a judge of a lower court, I cannot exercise private judgment, but must follow the opinion of the majority, which, as I read it, extends the immunity to all governmental agencies created by a State for the performance of public functions.

The motion to dismiss will be granted.

Exception to the debtor and the intervenor.

Dated this 13th day of November, 1937.

Leon R. Yankwich, United States District Judge.

[fol. 119] [File endorsement omitted.]

---

[fol. 120] IN UNITED STATES DISTRICT COURT

No. 4575. Bkey.

ORDER GRANTING MOTION TO DISMISS—November 13, 1937

This matter having been heretofore submitted for decision on the motion to dismiss.

The motion of certain creditors to dismiss is granted on the ground the law is unconstitutional, and the restraining order is discharged.

Exception to debtor and intervenor. Opinion filed.

14/306.

[fol. 121]

## IN UNITED STATES DISTRICT COURT

[Title omitted.]

## PROOF OF CLAIM—Filed November 26, 1937

H. A. Mulligan, upon oath, says that he is Treasurer of the Reconstruction Finance Corporation, an agency of the United States Government, having its principal place of business in Washington in the District of Columbia, and that he is duly authorized to make this proof, and says that the Lindsay-Strathmore Irrigation District of Lindsay, in the State of California, which has heretofore filed a petition for the Composition and Readjustment of its Debts, was at and before the filing of the petition, and still is, indebted to the Reconstruction Finance Corporation in the amount of Twelve Thousand Five Hundred Dollars (\$12,500), consisting of:

\$10,000 principal amount of Lindsay-Strathmore Irrigation District First Issue 6% Bonds, dated July 1, 1916, as follows:

Number	Maturity Date	Denomination
580 .....	July 1, 1936	\$500
1307/1308 .....	July 1, 1942	"
1614/1616 .....	July 1, 1944	"
1642 .....	"	"
1649/1652 .....	"	"
1735/1736 .....	July 1, 1945	"
1784 .....	"	"
1788/1789 .....	"	"
1792 .....	"	"
1833/1835 .....	"	" , and

\$2,500 principal amount of Lindsay-Strathmore Irrigation District Second Issue 6% Bonds, dated October 1, 1918, as follows:

Number	Maturity Date	Denomination
183/187 .....	October 1, 1942	\$500;

that no part of the debt has been paid and that there are no set-offs or counter-claims to the same; and that said Corporation has not, nor has any person by its order, or to the knowledge or belief of this deponent, for its use, had



or received any manner of security for said debt whatever. [fol. 122] That this Corporation has heretofore made a loan to W. J. Burns, Trustee, Phoenix, Arizona, in the amount of \$736,838.27, which loan is evidenced by his collateral note, dated April 29, 1937, payable on demand with 4% interest from date until paid, and secured by \$1,018,000 principal amount of Lindsay-Strathmore Irrigation District First Issue 6% bonds, dated July 1, 1916, and \$212,000 principal amount of Lindsay-Strathmore Irrigation District Second Issue 6% Bonds, dated October 1, 1918, the bonds of both issues having the numbers, maturities and denominations as set forth in a schedule thereof attached to the proof of claim filed in this cause by W. J. Burns, Trustee, the owner and holder of the legal title to such bonds; and that no part of the debt evidenced by such collateral note of W. J. Burns, Trustee, has been paid and that there are no set-offs or counter-claims to the same; and that said Corporation has not, nor has any person by its order, or to the knowledge or belief of this deponent, for its use, had or received any manner of security for said debt whatever.

That the Reconstruction Finance Corporation, holder as pledgee of \$1,230,000 aggregate unpaid principal amount of bonds of the petitioner, as mentioned in the next preceding paragraph, hereby authorizes W. J. Burns, Trustee, as owner and holder of the legal title to such bonds, to file in these proceedings his proof of claim against the petitioner for the aggregate unpaid principal amount of such bonds; provided, however, such consent is given upon the express condition that all sums and amounts received by him through or under the Composition proposed by the petitioner shall be applied to the payment of his indebtedness evidenced by his above-mentioned collateral note, or so much thereof as may be necessary for such purpose.

H. A. Mulligan, Treasurer, Reconstruction Finance Corporation.

Subscribed and sworn to before me this 26th day of October, 1937. Martha LaFitte Ray, Notary Public. My commission expires July 15, 1941. (Seal.)

[fol. 123] [File endorsement omitted.]

[fol. 124] IN UNITED STATES DISTRICT COURT

[Title omitted]

PROOF OF CLAIM—Filed November 26, 1937

Comes now W. J. Burns, Trustee, of Phoenix, in the County of Maricopa in the State of Arizona, on this the 26 day of October, A. D. 1937, and upon his oath says:

That Lindsay-Strathmore Irrigation District, of Lindsay, in the County of Tulare, in the State of California, which has heretofore filed in the above captioned Court a petition for the composition and readjustment of its debts, was at and before the filing of the petition and still is indebted to the deponent in the sum of \$1,230,000.00, as evidenced by the aggregate unpaid principal amount of the outstanding bonds of the petitioner, the legal title to which is now and was at the time of filing such petition vested in deponent, which bonds are more particularly described in the schedule attached hereto and made a part hereof by reference; that no part of the debt has been paid and that there are no set-offs or counter-claims to the same; that such bonds are payable out of taxes levied and to be levied against the lands within petitioner, and are on a parity with other bonds of the issues of which they are part; and that otherwise the deponent has not nor has any person by his order or to his knowledge or belief, or for his use, had or received any manner of security for such debt whatever.

That the deponent has heretofore as Trustee, but not individually, borrowed from the Reconstruction Finance Corporation, an agency of the United States government, the sum of \$736,838.27, evidenced by his collateral note in the same amount dated April 29, 1937, payable to the Reconstruction Finance Corporation on demand, with four per centum (4%) interest thereon from date until paid; that as collateral security for the payment of such note and the interest thereon deponent has pledged and delivered to the Reconstruction Finance Corporation \$1,230,000.00 aggregate unpaid principal amount of bonds of the petitioner, [fol. 125] as more particularly described in the schedule attached hereto and made a part hereof by reference; that no part of the principal of such note has been paid; that the deponent acknowledges that he is now indebted as trustee, but not individually, to the Reconstruction Finance Corpora-

tion in the full amount as evidenced by his collateral note; that he expressly agrees and consents that all sums received by him through or under the composition and debt readjustment proposed by the petitioner, or so much thereof as may be necessary to pay in full the principal of and interest on such note shall be applied and used exclusively for that purpose; and that the Reconstruction Finance Corporation has heretofore filed in this proceeding its written consent to the filing by deponent of this, his proof of claim, against the petitioner.

W. J. Burns, Trustee.

Subscribed and sworn to before me this 26 day of October, 1937. R. S. Lamb, Notary Public. My commission expires Jan. 26, 1939.

[fol. 126] Schedule of Bonds Held as Collateral

First Issue—Dated July 1, 1916

Bond Numbers	\$1,000 Denomination	Total Prin. Amt.
258-260		3,000
337-341, 346-353, 362-364		16,000
342-345, 357-361		9,000
421-429, 431, 432, 434-438, 442-449, 451-453		27,000
430, 450		2,000
527-531, 533, 539, 547-552, 554-557		17,000
542-544		3,000
631-639, 643, 651-657, 662		18,000
640-642, 644-646, 658, 660, 663-665		11,000
661		1,000
736, 737, 739-748, 758-761		16,000
738, 753-757, 762-770		15,000
841-852, 858-860, 862, 868, 871-879, 881		27,000
853-857, 861, 863-867, 880		12,000
968, 976-980, 983-990, 992-994, 998-1008		28,000
967, 969-975, 991		9,000
1097-1106, 1108-1115, 1118-1120, 1126-1130, 1132-1134		29,000
1093-1096, 1107, 1116, 1117, 1121-1125, 1131		13,000
1229, 1231, 1232, 1234, 1237, 1239, 1240, 1242-1249, 1251-1256, 1258-1260		24,000
1219-1228, 1230, 1233, 1241		13,000

1345-1349, 1254, 1355, 1357, 1358, 1361, 1365-1368, 1370, 1371, 1379-1391 .....	29,000
1350-1353, 1356, 1359, 1360, 1362-1364, 1369, 1392, 1393 .....	13,000
1492-1496, 1500-1509, 1520, 1523, 1525, 1528-1546 ..	37,000
1497-1499, 1510, 1512-1519, 1526, 1527, 1547 .....	15,000
1692 .....	1,000
1662-1667, 1670-1674, 1678, 1682, 1683, 1689-1691, 1695-1702, 1712, 1713, 1715-1723 .....	36,000
1660, 1661, 1668, 1669, 1679-1681, 1684-1688, 1693, 1694, 1703-1711, 1714, 1724-1729 .....	30,000
1903 .....	1,000
1870-1872, 1879, 1882-1888, 1897, 1898, 1901, 1902, 1907-1913, 1916-1921, 1929-1931, 1939-1941 .....	34,000
1876, 1877, 1880, 1881, 1892-1896, 1899-1900, 1904- 1906, 1914, 1915, 1922-1924, 1932-1938 .....	26,000
<b>Total .....</b>	<b>\$515,000</b>

515 Bonds.

[fol. 127] First Issue—Dated July —, 1916

## \$500 Denomination

Bond Numbers	Total Prin. Amt.
293, 294, 311, 319, 320 .....	2,500
365-370, 375-380 .....	6,000
371-374, 381-384, 389-405 .....	12,500
456-461, 466-473, 476-479, 484-494, 498, 500-506 ..	18,500
462-465, 474, 475, 507 .....	3,500
564, 573-576, 582-584, 593-602, 604-613, 620, 624-630	18,000
565-572, 581, 603, 617-619, 622, 623 .....	7,500
666-675, 692-695, 699-718, 720, 721, 723-732 .....	23,000
678-681, 684, 685 .....	3,000
771-780, 834, 835, 837 .....	6,500
784, 785, 789-816, 823-833, 838, 839 .....	21,500
883-889, 900-904, 907, 913-933, 939, 943-960 .....	26,500
890-899, 905, 906, 908-912, 937, 938, 940, 961-966 ..	13,000
1009-1026, 1031, 1032, 1035-1038, 1051-1054, 1056- 1060, 1072, 1073, 1075, 1076 .....	18,500
1027-1030, 1033, 1034, 1039-1050, 1055, 1061-1071, 1074, 1077-1092 .....	23,500
1135-1136, 1148, 1149, 1160, 1162, 1163, 1166-1169, 1172-1175, 1178-1189, 1192-1212, 1216, 1217 .....	25,000



Bond Numbers	Total Prin. Amt.
1137-1147, 1150-1159, 1161, 1164, 1165, 1170, 1171, 1176, 1177, 1190, 1191, 1213-1215, 1218.....	17,000
1261-1279, 1283-1285, 1287-1289, 1296-1306, 1309, 1318-1321, 1323-1326, 1329-1341, 1343, 1344....	30,000
1280, 1281, 1293-1295, 1342.....	3,000
1394-1396, 1407-1415, 1421, 1424-1431, 1437-1447, 1466-1479, 1481-1491.....	28,500
1397-1400, 1403-1406, 1432-1436, 1456-1465, 1480..	12,000
1548, 1549, 1554-1579, 1581, 1582, 1586, 1587, 1607- 1613, 1617-1636, 1638, 1639-1641, 1643-1648, 1653- 1659.....	38,000
1550-1553, 1580, 1583-1585, 1588-1594, 1601-1606, 1637.....	11,000
1730-1732, 1739-1758, 1760, 1767, 1772, 1773, 1781, 1791, 1793-1802, 1804, 1808-1832, 1845-1850, 1853- 1869.....	44,000
1733, 1834, 1759, 1761-1766, 1768-1771, 1774-1780, 1782, 1783, 1786, 1787, 1805-1807, 1836-1844.....	18,000
1947-1950, 1953-1956, 1960-1962, 1964-1966, 1968, 1969, 1974-1979, 1988-1994, 2001-2006, 2009-2016, 1030, 2031-2034, 2039-2041, 2044-2096, 2099-2100	53,000
1951, 1952.....	1,000
1957-1959, 1963, 1967, 1970, 1971, 1973, 1980-1987, 2007, 2008, 2017-2029, 2035-2038, 2042, 2043.....	18,500
Total .....	\$503,000
1,006 Bonds.	

[fol. 128] Second Issue—Dated October 1, 1918

\$1,000 Denomination

Bond Numbers	Total Prin. Amt.
23-26.....	4,000
34-38.....	5,000
60.....	1,000
76-80.....	5,000
95-100.....	6,000
114-120.....	7,000
132-138.....	7,000
150, 151.....	2,000
152-156.....	5,000
173-175.....	3,000
176-179.....	4,000

Bond Numbers	Total Prin. Amt.
196, 198-200	4,000
197, 201	2,000
218-225	8,000
240-243, 243-247	7,000
244	1,000
167-169, 272, 275, 276	6,000
273, 274	2,000
197-406	10,000
307, 308	2,000
335-348	14,000
Total	\$105,000

## 105 Bonds.

## \$500 Denomination

27-33	3,500
39-43	2,500
58, 59	1,000
68-75	4,000
82-94	6,500
101-113	6,500
121-129	4,500
130-131	1,000
139-148	5,000
149	500
157-172	8,000
180-182, 188-192	4,000
193-195	1,500
204-211	4,000
212-217	3,000
226-239	7,000
248-255, 264, 265	5,000
256-261	3,000
277-286	5,000
287-296	5,000
309-326, 329-334	12,000
327, 328	1,000
349-375	13,500
Total	\$107,000

## 214 Bonds.

[fol. 129] [File endorsement omitted.]

[fol. 130] IN UNITED STATES DISTRICT COURT, SOUTHERN  
DISTRICT OF CALIFORNIA, NORTHERN DIVISION

No. 4575

In the Matter of the Petition of LINDSAY-STRATHMORE IRRIGATION DISTRICT, an Insolvent Taxing Agency, for Confirmation of a Plan for the Composition and Readjustment of Its Debts

JUDGMENT OF DISMISSAL—Filed December 2, 1937

The motion of Milo W. Bekins and Reed J. Bekins, as trustees appointed by the will of Martin Bekins, deceased, Milo W. Bekins and Reed J. Bekins, as trustees appointed by the will of Katherine Bekins, deceased, J. R. Mason, James Irvine, A. Heber Winder as trustee for Eva A. Parrington trust, C. A. Moss, and James H. Jordan, creditors of Lindsay-Strathmore Irrigation District, to dismiss this cause, and the return of said creditors to the Order to Show Cause Why an Injunction Should Not Issue and Why Interlocutory Decree Making Plan Temporarily Operative Should Not Be Entered herein coming on regularly to be heard by the Court the 8th day of November, 1937, and it appearing that in this cause Lindsay-Strathmore Irrigation District filed its verified petition setting forth a plan for composition and readjustment of its debts under Sections 81, 82 and 83 of Chapter X of the National Bankruptcy Law, as amended, and that this Court made an Order Approving the Petition as Properly Filed and for Notice to Creditors on September 21, 1937, and that this Court on September 22, 1937, made an Order to Show Cause Why an Injunction Should Not Issue and Why Interlocutory Decree Making Plan Temporarily Operative Should Not Be Entered, and fixed Monday the 11th day of October, 1937, at Fresno, California, as the time and place for the return to said Order; said creditors of said [fol. 131] District, bondholders thereof, Milo W. Bekins and Reed J. Bekins, as trustees appointed by the will of Martin Bekins, deceased, Milo W. Bekins and Reed J. Bekins, as trustees appointed by the will of Katherine Bekins, deceased, J. R. Mason, James Irvine, A. Heber Winder, trustee for Eva Parrington trust, C. A. Moss and James H. Jordan, having made their return to said Order showing

cause why an injunction should not issue and why an interlocutory decree making the plan temporarily operative should not be entered; and James Irvine, one of said creditors, having filed herein his proof of claim as required by the Court's order, from which it appears that he is a creditor of Lindsay-Strathmore Irrigation District and the owner and holder of bonds of said district, described in the petition herein, in the principal amount of \$18,500.00, of which bonds in the amount of \$14,000.00 have matured, and attached to which are interest coupons in the amount of \$3825.00 which have matured, and which bonds and coupons have all been severally presented for payment;

And it further appearing that said James Irvine and the other said creditors, as shown by their return, are creditors of the Lindsay-Strathmore Irrigation District and the owners and holders of bonds and interest coupons of said District adversely affected by the proposed plan for composition and readjustment of the debts of said District, and the said creditors having duly made their motion to dismiss this cause, which said motion for dismissal and return to said order were based, amongst other things, upon the unconstitutionality of the said Sections 81, 82 and 83 of the Bankruptcy Act of 1898, as amended, and said return and motion coming on regularly to be heard by the Court on the 11th day of October, 1937;

And it appearing therefrom that the constitutionality of the statutes aforesaid was drawn in question by the pleadings of the said creditors, this Court certified such fact to [fol. 132] the Attorney General of the United States, and upon his application the case was duly continued to November 8, 1937, whereupon an Order was made permitting the Attorney General of the United States to intervene as a party to said cause and to be heard on the question of the constitutionality of the Act, an exception being allowed to the respondent creditors;

And the said return of the Order having been submitted to the Court and the motion to dismiss the cause having been likewise submitted to the Court and by the Court considered, and the Court being now fully advised in the premises, determines that Sections 81, 82 and 83 of the Bankruptcy Act of 1898, as amended, are unconstitutional and the proceedings taken thereunder void;

Wherefore, it is Hereby Ordered, Adjudged and Decreed that the said Order to Show Cause Why Injunction Should



Not Issue and Why Interlocutory Decree Making Plan Temporarily Operative Should Not be Entered be and the same is hereby vacated and set aside and the Petition of Lindsay-Strathmore Irrigation District Herein for Confirmation of a Plan for the Composition and Readjustment of Its Debts be and the same is hereby dismissed with prejudice, solely upon the ground that the statute under which the proceeding is brought is unconstitutional. An exception to this order and judgment is hereby allowed to the debtor, Lindsay-Strathmore Irrigation District, and to the intervenor.

Dated December 2, 1937.

Leon R. Yankwich, United States District Judge.

Approved as to form as provided in Rule 44.

Mitchell, Silberberg, Roth & Knupp, James R. McBride, by Guy Knupp, Attorneys for Lindsay-Strathmore Irrigation District. Ben Harrison, United States Attorney, Attorneys for Intervenor.

Decree entered and recorded 12/2/37. R. S. Zimmerman, Clerk, by Louis J. Somers, Deputy Clerk.

[fol. 133] [File endorsement omitted.]

---

[fol. 134] IN UNITED STATES DISTRICT COURT

No. 4575. Bkey.

[Title omitted]

ORDER AMENDING ORDER GRANTING MOTION TO DISMISS—  
December 13, 1937

Good cause appearing therefor, the minute order heretofore entered under date of November 13, 1937, is hereby amended to read as follows:

This matter having been heretofore submitted for decision on the motion to dismiss, opinion filed sustaining motion of certain creditors to dismiss and to discharge restraining order. Formal order of dismissal to follow.

Exception to debtor and intervenor. Opinion filed.

14/349.

[fol. 135] IN UNITED STATES DISTRICT COURT

No. 4575. Bankruptcy

[Title omitted]

PETITION FOR ORDER ALLOWING APPEAL—Filed December 13,  
1937

To the Honorable Leon R. Yankwich, Judge of the District  
Court of the United States, Southern District of California,  
Northern Division:

The Lindsay-Strathmore Irrigation District, petitioner  
above named, feeling aggrieved by the judgment of dismissal  
entered in the above entitled court and proceeding on the  
2nd day of December, 1937, hereby appeals from said judgment  
to the Supreme Court of the United States; the errors upon  
which such appeal is based are contained in the assignments  
of error filed herewith; petitioner prays that its appeal be  
allowed and that a citation be issued in accordance with law  
and that an authenticated transcript of the record and proceedings  
be forwarded to the Supreme Court of the United States at  
Washington, D. C., under the rules of such court, in such  
cases made and provided.

Your petitioner further prays that an order be made  
fixing the amount of security to be given by appellant,  
conditioned as provided by law.

Dated this 13th day of December, 1937.

Lindsay-Strathmore Irrigation District, by Jas. R.  
McBride, Guy Knupp, Mitchell, Silberberg, Roth  
& Knupp, by Guy Knupp, Its Attorneys.

gk; m.  
12/11/37.

[File endorsement omitted.]

[fol. 136] IN UNITED STATES DISTRICT COURT

No. 4575. Bankruptcy

[Title omitted]

ASSIGNMENTS OF ERROR—Filed December 13, 1937

Lindsay-Strathmore Irrigation District, petitioner and  
appellant herein, in support of its petition for appeal from

the judgment of dismissal of the District Court of the United States for the Southern District of California, Northern Division, made and entered in the above entitled proceeding on the 2nd day of December, 1937, presents and files the following assignments of error:

The District Court of the United States for the Southern District of California, Northern Division, erred:

1. In deciding and decreeing to be unconstitutional the act of Congress known as Chapter X of the Bankruptcy Act (Aug. 16, 1937, C. 657, 50 Stats. 659, U. S. C. A. title XI, Sec. 401-404) as applicable to the petition of the Lindsay-Strathmore Irrigation District;

2. In dismissing the petition of petitioner and its proceedings brought under the above mentioned act of Congress on the ground that said Chapter X of the Bankruptcy Act, the act under which the petition was filed, is unconstitutional;

3. In dismissing the petition of petitioner and its proceedings brought under the above mentioned act of Congress;

4. In vacating and setting aside the order to show cause why a restraining order should not issue and plan be made [fol. 137] temporarily operative.

Wherefore, petitioner and appellant prays that the judgment in said proceeding be reversed and the proceeding remanded with instructions to the trial court as to further proceedings therein; and for such other and further relief as may be just in the premises.

Lindsay-Strathmore Irrigation District, by Jas. R. McBride, Guy Knupp, Mitchell, Silberberg, Roth & Knupp, by Guy Knupp, Its Attorneys.

gk; m.  
12/11/37.

[File endorsement omitted.]

[fol. 138] IN UNITED STATES DISTRICT COURT

No. 4575. Bankruptcy

[Title omitted]

ORDER ALLOWING APPEAL—Filed December 13, 1937

The Lindsay-Strathmore Irrigation District, petitioner in the above entitled proceeding, having prayed for the allowance of an appeal in this proceeding to the Supreme Court of the United States from the judgment of dismissal made and entered in the above entitled proceeding by the District Court of the United States for the Southern District of California, Northern Division, on the 2nd day of December, 1937, and from each and every part thereof, and having presented and filed its petition for appeal, assignment of errors, prayer for reversal, and a statement as — jurisdiction, pursuant to statutes and the rules of the Supreme Court of the United States in such cases made and provided;

It is now here ordered that an appeal be and the same is hereby allowed to the Supreme Court of the United States from the District Court of the United States for the Southern District of California, Northern Division, in this proceeding as provided by law.

And it is further ordered that the clerk of this court shall prepare and certify a transcript of the record, proceedings and judgment in this proceeding and transmit the same to the Supreme Court of the United States so that he shall have the same in said court within sixty days of this date.

And it is further ordered that security for costs on appeal be fixed in the sum of \$500.00.

Dated this 13th day of December, 1937.

(Signed) Leon R. Yankwich, United States District Judge.

GK: EF.

12/10/37.

[File endorsement omitted.]



[fols. 139-179] IN UNITED STATES DISTRICT COURT

No. 4575. Bankruptcy

[Title omitted]

ORDER APPROVING SECURITY FOR COSTS—Filed December 13,  
1937

It appearing that the sum of Five Hundred Dollars (\$500.00) in cash has been deposited with the Clerk of the above entitled Court in lieu of a surety bond, as security for costs upon the appeal of Lindsay-Strathmore Irrigation District to the Supreme Court of the United States from the judgment of dismissal entered in the above entitled court on the 2nd day of December, 1937,

It is Hereby Ordered, that if said Lindsay-Strathmore Irrigation District shall prosecute its said appeal to effect and if it fail to make its plea good, shall answer all costs, not exceeding in the aggregate the sum of Five Hundred Dollars (\$500.00), then the said Five Hundred Dollars (\$500.00) shall be returned by said Clerk to the attorneys of record for said Lindsay-Strathmore Irrigation District; otherwise said Five Hundred Dollars (\$500.00) shall be employed to pay any judgment for costs not exceeding the aggregate of Five Hundred Dollars (\$500.00) awarded to respondents and appellees herein.

And it is Further Ordered that said deposit of cash shall be deemed full compliance with the order of this court dated December 13th, 1937, requiring security for costs in the sum of Five Hundred Dollars (\$500.00).

Dated December 13th, 1937.

(Signed) Leon R. Yankwich, United States District Judge.

gk:m.  
12/10/37.

[File endorsement omitted.]

[fol. 180] IN UNITED STATES DISTRICT COURT

No. 4575. Bankruptcy

[Title omitted]

PRÆCIPUE FOR TRANSCRIPT OF RECORD—Filed December 16,  
1937

To the Clerk of the United States District Court for the  
Southern District of California, Northern Division:

You Will Please Incorporate in the transcript of the  
record on appeal to the Supreme Court of the United States  
in the above entitled proceeding the following:

1. Petition of Lindsay-Strathmore Irrigation District for  
confirmation of plan for composition and readjustment of  
its debts;

2. Order approving petition as properly filed and for  
notice to creditors;

3. Order to show cause why injunction should not issue  
and why interlocutory decree making plan temporarily  
operative should not be entered;

4. Motion to dismiss of Milo W. Bekins and Reed J.  
Bekins, as Trustees appointed by the will of Martin Bekins,  
deceased; Milo W. Bekins and Reed J. Bekins, as Trustees  
appointed by the Will of Katherine Bekins, deceased;  
J. R. Mason; James Irvine; A. Heber Winder, as Trustee  
for Eva A. Parrington Trust; and C. A. Moss;

5. Motion to dismiss of James H. Jordan;

6. Notice of motion to dismiss petition by Milo W.  
Bekins and Reed J. Bekins, as Trustees appointed by the  
[fol. 181] Will of Martin Bekins, deceased; Milo W. Bekins  
and Reed J. Bekins, as Trustees appointed by the Will of  
Katherine Bekins, deceased; J. R. Mason, James Irvine;  
A. Heber Winder, as Trustee for Eva A. Parrington Trust;  
and C. A. Moss;

7. Return of certain creditors showing cause why an  
injunction should not issue and why an interlocutory decree  
making plan temporarily operative should not be entered;

8. Affidavit of mailing notice to creditors by Lillian  
Goodman;

9. Affidavit of mailing order to show cause by Lillian  
Goodman;

10. Affidavit of publication by Morely M. Maddox;

11. Affidavit of publication by G. Artz;

12. Certificate of court under Act of August 24, 1937,  
issued on October 11, 1937;

13. Petition of the United States to intervene under the Act of August 24, 1937, filed November 8, 1937;

14. Order granting permission of United States to intervene entered November 8, 1937;

15. Opinion of court on motion to dismiss;

16. Proof of claim by W. J. Burns, Trustee;

17. Proof of claim by Reconstruction Finance Corporation;

18. Judgment of dismissal;

19. Petition for appeal;

20. Assignments of error;

21. Order allowing appeal;

22. Order approving security for costs;

23. Citation with admission of service;

24. Statement as to jurisdiction of the Supreme Court—Rule 12;

25. Statement directing attention to Section 3 of Rule 12;

26. Præcipe of appellant with admission of service;  
[fol. 182] 27. Clerk's certificate.

Said transcript to be prepared as required by law and the rules of this court and the Supreme Court of the United States and to be filed in the office of the Clerk of the United States at Washington, D. C., on or before the 11th of February, 1938.

Dated this 13th day of December, 1937.

Lindsay-Strathmore Irrigation District, by James R. McBride, Guy Knupp, Mitchell, Silberberg, Roth & Knupp, by Guy Knupp, Its Attorneys.

Due service of the within "Præcipe" acknowledged this 14th day of December, 1937.

W. Coburn Cook, Attorney of record for Milo W. Bekins, and Reed J. Bekins, as Trustees appointed by the will of Martin Bekins, deceased; Milo W. Bekins and Reed J. Bekins, as Trustees appointed by the Will of Katherine Bekins, deceased; J. R. Mason; James Irvine; A. Heber Winder; as trustee for Eva A. Parrington trust; C. A. Moss and James H. Jordan, the objecting creditors of Lindsay-Strathmore Irrigation District who moved to dismiss the proceeding.

gk;m.

12/11/37.

[File endorsement omitted.]

[fol. 183] IN UNITED STATES DISTRICT COURT

No. 4575. Bankruptcy

[Title omitted]

COUNTER PRÆCIPUE FOR TRANSCRIPT OF RECORD—Filed December 23, 1937

To the Clerk of the Above Entitled Court:

You are hereby requested to include in the transcript of record to be filed in the Supreme Court of the United States pursuant to the appeal allowed in the above entitled cause to the Lindsay-Strathmore Irrigation District in addition to the portions of the record required by the United States of America the following papers, to-wit:

1. Certified copy of judgment of dismissal signed by Honorable Geo. Cosgrave in cause No. 4005 in bankruptcy in the District Court of the United States, for the Southern District of California, Northern Division, in the matter of Lindsay-Strathmore Irrigation District, an insolvent taxing district, filed as an exhibit upon return to order to show cause on November 8, 1937.

2. Proof of Claim of James Irvine.

3. Minute Order dated November 8, 1937, authorizing intervention of United States of America and allowing exception to appellees.

4. Amended minute order of court dated November 13, 1937.

5. Minute order dated December 13, 1937.

6. This Counter-Præcipe for transcript of record.

And include in the transcript of record to be filed in the office of the Clerk of the United States Supreme Court at Washington, D. C.

Dated December 22, 1937.

W. Coburn Cook, Attorney for Milo W. Bekins, et al.,  
Appellees.

[fols. 184-185] AFFIDAVIT OF SERVICE BY MAIL

STATE OF CALIFORNIA,

County of Stanislaus, ss:

Jeanette Ofelth, being first duly sworn, says:

That she is a citizen of the United States; that she resides in the City of Turlock, County of Stanislaus, State of



California, in the county in which the mailing hereafter referred to took place; that she is over the age of 18 years and not interested in the above entitled matter; that on the 22nd day of December, 1937, she placed a full, true and correct copy of the annexed Counter-Præcipe for Transcript of Record in each of two envelopes, duly sealed, and deposited the same in the United States Post Office at Turlock, California, with postage thereon fully prepaid, addressed to Mr. James R. McBride, Attorney at Law, Lindsay, California; Mitchell, Silberberg, Roth & Knupp and Guy Knupp, Attorneys at Law, 603 Roosevelt Building, Los Angeles, California.

That said James R. McBride, Mitchell, Silberberg, Roth & Knupp and Guy Knupp are the attorneys for record for Lindsay-Strathmore Irrigation District, appellant. That there is daily communication between Lindsay and Turlock, and between Los Angeles and Turlock, California.

Jeanette Ofelth.

Subscribed and sworn to before me this 22nd day of December, 1937. Gilbert Moody, Notary Public in and for the County of Stanislaus, State of California.

[File endorsement omitted.]

---

[fol. 186] Clerk's certificate to foregoing transcript omitted in printing.

---

[fol. 187] IN UNITED STATES DISTRICT COURT

No. 4575. In Bankruptcy.

[Title omitted]

PETITION FOR APPEAL—Filed December 13, 1937

To the Honorable the Judges of the District Court of the United States for the Southern District of California:

Now comes the United States of America, intervenor in the above entitled case and prays that it may be permitted to take an appeal from a judgment of dismissal entered in

the above entitled cause on December 2, 1937, to the Supreme Court of the United States for the reasons specified in the assignment of errors which is filed herewith.

December 13, 1937.

United States of America, by Sam E. Whitaker, Assistant Attorney General; Ben Harrison, United States Attorney for the Southern District of California.

[fol. 188] [File endorsement omitted.]

[fol. 189] IN UNITED STATES DISTRICT COURT

No. 4575. In Bankruptcy

[Title omitted]

ASSIGNMENT OF ERRORS—Filed December 13, 1937

Appellant, the United States of America, assigns the following errors in the record and proceedings in the above entitled cause:

1. The Court erred in holding that Chapter X of the Bankruptcy Act, Act of August 16, 1937, Public No. 302, 75th Congress, is unconstitutional as applicable to the petition of the Lindsay-Strathmore Irrigation District herein.

2. The Court erred in dismissing the petition of the Lindsay-Strathmore Irrigation District on the ground that Chapter X of the Bankruptcy Act, Act approved August 16, 1937, Public No. 302, 75th Congress, the Act under which said petition was filed, is unconstitutional and void.

Wherefore, the United States of America prays that said judgment of the Court may be reversed and further relief as to the Court may seem just and proper.

December 13, 1937.

United States of America, by Sam E. Whitaker, Assistant Attorney General; Ben Harrison, United States Attorney for the Southern District of California.

[fol. 190] [File endorsement omitted.]

[fol. 191] IN UNITED STATES DISTRICT COURT

No. 4575. In Bankruptcy

[Title omitted]

ORDER ALLOWING APPEAL—Filed December 13, 1937.

To the Honorable Judges of the District Court of the United States for the Southern District of California:

The petition of the United States of America, intervenor in the above entitled cause, for an appeal to the Supreme Court of the United States from a judgment of the District Court of the United States for the Southern District of California, entered herein on December 2, 1937, dismissing the petition of the Lindsay-Straffmore Irrigation District, having been filed herein, accompanied by an assignment of errors and statement of jurisdiction, all as provided by Rules 9 and 12 of the Rules of the Supreme Court of the United States, and the said papers having been presented to this Court:

It is hereby ordered that the United States of America be allowed an appeal to the Supreme Court of the United States from said judgment of said District Court entered on December 2, 1937, and that the Clerk of said District Court of the United States for the Southern District of California shall transmit to the Supreme Court of the United States a duly authenticated transcript of the record, proceedings, and papers in this cause, all in accordance with Rules 10 and 12 of the Rules of the Supreme Court of the United States.

[fol. 192] The appeal is allowed without the giving of bond.

December 13, 1937.

Leon R. Yankwich, United States District Judge.

[fol. 193] [File endorsement omitted.]

[fol. 194] IN SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1937

No. 757

STATEMENT OF POINTS RELIED UPON AND DESIGNATION OF ENTIRE RECORD FOR PRINTING—Filed February 28, 1938

Pursuant to Rule XIII, Paragraph 9, of this Court, appellant states that it intends to rely upon all of the points in its assignment of errors.

Appellant deems the entire record, as filed in the above entitled cause, necessary for the consideration of the points relied upon.

Golden W. Bell, Acting Solicitor General.

Service acknowledged February 18, 1938.

Maurice E. Harrison, Counsel for Appellee. Jas. R. McBride, Counsel for Appellant Lindsay-Strathmore Irrigation District. W. Coburn Cook, of Counsel.

[fol. 194½] [File endorsement omitted.]

[fol. 195] IN SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1937

No. 772

STATEMENT OF POINTS INTENDED TO BE RELIED UPON BY APPELLANT AND PARTS OF RECORD TO BE PRINTED—Filed February 8, 1938

Lindsay-Strathmore Irrigation District, appellant in the above entitled cause, pursuant to the provisions of paragraph 9 of Rule 13 of this Court, hereby states that the points upon which it intends to rely in this Court in this case are as follows:

1. Chapter X of the Bankruptcy Act (August 16, 1937, C. 657, 50 Stats. 659, U. S. C. A., Title 11, Secs. 401, 404) as applicable to the petitioner and appellant, Lindsay-Strathmore Irrigation District, is constitutional and valid.
2. The District Court erred in dismissing the petition of petitioner and appellant, Lindsay-Strathmore Irrigation



District, and the proceedings brought by it under the above mentioned act of Congress on the ground that said chapter [fol. 196] of the Bankruptcy Act is unconstitutional.

3. The District Court erred in vacating and setting aside the order to show cause why a restraining order should not issue and the plan be made temporarily operative, which order to show cause was issued upon the filing of said petition under the above mentioned act of Congress.

Said appellant, Lindsay-Strathmore Irrigation District, further represents that the whole record as filed is necessary for a consideration of the points upon which appellant intends to rely, and requests that the entire record as filed be printed.

Dated February 4, 1938.

Jas. R. McBride, National Bank Building, Lindsay, California, Counsel for Appellant Lindsay-Strathmore Irrigation District. Guy Knupp, 603 Roosevelt Building, Los Angeles, California, of Counsel for Appellant Lindsay-Strathmore Irrigation District.

#### Admission of Service

Service of the foregoing statement and designation is hereby admitted this — day of February, 1938.

— — —, Counsel for Appellees. — — —, of Counsel for Appellees.

gk:m.

2/4/38.

[fol. 197]

#### Affidavit of Mailing

STATE OF CALIFORNIA,

County of Los Angeles, ss:

Pauline Moore, being first duly sworn, deposes and says:

That she is, and at all times herein mentioned was, a citizen of the United States, over the age of eighteen years, and not a party to the above entitled action.

That on the 4th day of February, 1938, at the request and on behalf of the attorneys for appellant, Lindsay-Strathmore Irrigation District, she served a true copy of the attached Designation of Points Intended to be Relied Upon by Appellant and Parts of Record to be Printed on Maurice E. Harrison, attorney for appellees, and on W. Coburn Cook, of counsel for appellees, and on Ben Harrison, attorney for appellant, United States of America, by

depositing envelopes containing copies of said Designation of Points Intended to be Relied Upon by Appellant and Parts of Record to be Printed in the United States Post Office in the City of Los Angeles, County of Los Angeles, State of California, which envelopes bore the names and addresses as follows:

Maurice E. Harrison, Esq., Attorney at Law, 620 Market Street, San Francisco, California.

W. Coburn Cook, Esq., Attorney at Law, Berg Building, Turlock, California.

Ben Harrison, Esq., United States District Attorney, Pacific Electric Building, Los Angeles, California.

That said envelopes were sealed and deposited in the mail at said Post Office, with the postage thereon fully prepaid. That the said addresses are the office addresses of said attorneys as last given by them on documents which were filed in said cause and served on the said appellant. That there is regular communication by mail between the place of mailing and the places so addressed.

Pauline Moore.

Subscribed and sworn to before me this 4th day of February, 1938. Lynne V. Buck, Notary Public in and for the County of Los Angeles, State of California. (Seal.)

[fol. 198½] [File endorsement omitted.]

[fol. 199] IN SUPREME COURT OF THE UNITED STATES,  
OCTOBER TERM, 1937

No. 757

No. 772

STIPULATIONS AS TO PRINTING RECORDS—Filed March 9, 1938

On Appeal from the District Court of the United States  
for the Southern District of California

As the record on file with the Clerk of the Supreme Court of the United States in Case No. 772 contains all the papers necessary to a consideration of the Government's Appeal

in Case No. 757, except the Government's Petition for Appeal, Assignment of Errors, and Order Allowing Appeal, it is hereby stipulated and agreed by and between the Acting Solicitor General, on behalf of the United States, and Counsel for the Lindsay-Strathmore Irrigation District, Appellant in Case No. 772, and Counsel for Appellees in both cases, that the printing of the record in Case No. 757 be dispensed with and that Case No. 757 be heard on the printed record in Case No. 772 with the addition to said record of this stipulation, the Government's Petition for Appeal, Assignment of Errors, and Order Allowing the Appeal as contained in the record in Case No. 757.

[fol. 200] It is Also Further Stipulated and Agreed between Counsel for the United States and Counsel for the Lindsay-Strathmore Irrigation District that the Government will pay one-half the cost of printing the record in Case No. 772 as amplified in accordance with this stipulation.

Dated March 1st, 1938.

Golden W. Bell, Acting Solicitor General of the United States. Jas. R. McBride, Counsel for Lindsay-Strathmore Irrigation District. Maurice E. Harrison, Counsel for Milo W. Bekins and Reed J. Bekins, as Trustees appointed by the Will of Martin Bekins, deceased, et al.

[fol. 201] [File endorsement omitted.]

[fol. 202] Endorsed on cover: File No. 42,238. S. California, D. C. U. S. Term No. 757. The United States of America, appellant, vs. Milo W. Bekins and Reed J. Bekins, as Trustees, Appointed by the Will of Martin Bekins, Deceased, et al., etc. Filed February 5, 1938. Term No. 757, O. T., 1937.

[fol. 203] Endorsed on cover: File No. 42,253. S. California, D. C. U. S. Term No. 772. Lindsay-Strathmore Irrigation District, appellant, vs. Milo W. Bekins and Reed J. Bekins, as Trustees appointed by the Will of Martin Bekins, Deceased, et al. Filed February 8, 1938. Term No. 772, O. T. 1937.

(4560)